

COMMITTEE CONFERENCE
FURTHER EVIDENTIARY HEARING

BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Petition to Amend the Commission) Docket No.
Decision Approving the) 01-AFC-7C
Application for Certification)
for the Russell City Energy Center)
_____)

CITY COUNCIL CHAMBERS

HAYWARD CITY HALL

777 B STREET

HAYWARD, CALIFORNIA 94541

WEDNESDAY, SEPTEMBER 5, 2007

6:03 p.m.

Reported by:
Richard A. Friant
Contract No. 170-07-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

John L. Geesman, Presiding Member

Jeffrey D. Byron, Associate Member

HEARING OFFICER AND ADVISORS

Paul Kramer, Hearing Officer

Gabriel Taylor, Advisor

STAFF AND CONSULTANTS PRESENT

Richard Ratliff, Staff Counsel

Lance Shaw, Project Manager

PUBLIC ADVISER

Michael Monasmith

APPLICANT

Greggory Wheatland, Attorney
Ellison, Schneider and Harris
on behalf of Calpine Corporation

Mike Argentine, Project Manager
Barbara McBride
Calpine Corporation

Douglas M. Davy
CH2M HILL

INTERVENOR

Paul N. Haavik, Property Manager
Checkaboard Square Rentals, Inc.

ALSO PRESENT

Mandy Lee, Representative of
Assemblywoman Hayashi

ALSO PRESENT

Mike Sweeney, Mayor
City of Hayward

Robert A. Bauman
City of Hayward

Audrey LePell
Citizens for Alternative Transportation Solutions

Carol Ford
California Pilots Association

Andrew Wilson

Suzanne Barba

John Gilbertson

Francisco Abrantes

Marie Jackson

Wafaa Avorashed
Healthy San Leandro Environmental Collaborative
Environmental Justice Air Quality Coalition

Stephanie Widger

Ernest Pacheco

Juanita Gutierrez

Joanne Gross

Tom Kersten

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P R O C E E D I N G S

6:03 p.m.

PRESIDING MEMBER GEESMAN: This is a meeting of the California Energy Commission's Siting Committee to take comments on the Presiding Member's Proposed Decision regarding the amendment to the existing license for the Russell City Energy Center.

I'm John Geesman, the Presiding Member of the Commission's Siting Committee. Next to me is Paul Kramer, the Hearing Officer who will conduct this proceeding tonight. To Paul's right is Commissioner Jeffrey Byron, the Associate Member of the Siting Committee. And to Commissioner Byron's right, Gabe Taylor, his Staff Advisor.

Paul, why don't you take it from here.

HEARING OFFICER KRAMER: Okay, thank you. Let's ask the parties to introduce themselves, beginning with the applicant.

MR. WHEATLAND: Good evening, I'm Gregg Wheatland; and I'm the attorney for the project owner.

MR. ARGENTINE: I'm Mike Argentine; I'm the Project Manager for Calpine.

1 DR. DAVY: My name is Doug Davy; I'm a
2 consultant to Calpine.

3 MR. HAAVIK: Paul Haavik, intervenor.

4 MR. RATLIFF: I'm Dick Ratliff, counsel
5 for the Energy Commission Staff.

6 MR. SHAW: Lance Shaw, Compliance
7 Project Manager.

8 HEARING OFFICER KRAMER: Okay. We also
9 have in the audience a representative from
10 Assemblywoman Hayashi's Office, Mandy Lee. Raise
11 your hand so the people can see it.

12 And, Mr. Wheatland, since this is on
13 cable, if you could use that microphone there I
14 think it will help the folks at home hear you
15 better.

16 MR. WHEATLAND: Very good.

17 HEARING OFFICER KRAMER: Okay, that's
18 the introductions.

19 The way we're going to run the meeting
20 tonight is first of all we have an agenda that's
21 available outside. If you didn't pick one up
22 basically we're going to reopen the evidentiary
23 hearing that was held back in July for some
24 relatively minor matters.

25 And then we will take public comments on

1 the proposed decision, and anything that happened
2 during the evidentiary hearing. And then we will
3 adjourn.

4 Although today's meeting is being
5 recorded and will be transcribed, I'm going to
6 need to get the revisions to the decision out
7 before the transcript will be available. So, I
8 may ask your indulgence as you're speaking to slow
9 down so that I can make sure I get everything I
10 need to get down on my pad. I'm not trying to
11 stop you or break your train of thought. I'm just
12 trying to make sure that your train doesn't crash
13 my pen if you know what I mean.

14 And later when we get to public
15 comments, and I'll say this again, for everyone's
16 sake I would suggest that if somebody has already
17 said what you wanted to say, then you just
18 indicate that you agree with what they said,
19 rather than repeating everything that they said.

20 So, with that, we have a few
21 housekeeping issues. There were a couple exhibits
22 that needed to be discussed about whether or not
23 they should be admitted into the record.

24 After last July's hearing staff
25 circulated a declaration of Paul Richins, which

1 was meant to be attached to exhibit number 101,
2 which was the staff assessment errata. Did staff
3 wish to move that into evidence?

4 MR. RATLIFF: Yes.

5 HEARING OFFICER KRAMER: Any objection
6 from any of the parties?

7 MR. WHEATLAND: No.

8 HEARING OFFICER KRAMER: Mr. Haavik?

9 MR. HAAVIK: None.

10 HEARING OFFICER KRAMER: Okay, seeing
11 none, that will be received into evidence today.

12 And also subsequent to our hearing there
13 were two documents that came basically from the
14 Airport Land Use Commission. One was a resolution
15 01-2007 of the Airport Land Use Commission dated
16 August 16, 2007. And in a memo at the time staff
17 asked that, or indicated its intention that it was
18 going to introduce that as an exhibit. Is that
19 still your intention?

20 MR. RATLIFF: Yes.

21 HEARING OFFICER KRAMER: Any objection
22 to receiving that into evidence?

23 MR. WHEATLAND: No objection.

24 MR. HAAVIK: No objection.

25 HEARING OFFICER KRAMER: Okay, that will

1 be exhibit number 108.

2 And at the same time staff also
3 circulated an email message from Cindy Horvath,
4 who is the planner who staffs the Airport Land Use
5 Commission. And it was covering comments from
6 Dave Needle, who I believe is a member of the
7 Commission.

8 At the time staff requested that this
9 also be entered into the evidentiary record. Is
10 that still your request?

11 MR. RATLIFF: Yes.

12 HEARING OFFICER KRAMER: Any objections
13 from the parties?

14 MR. WHEATLAND: With respect to that
15 exhibit, those are comments by an individual who
16 has not attended a hearing of this Commission; and
17 also he didn't attend a hearing of his own
18 Commission. So we think those would be more
19 appropriate to be included as public comment
20 rather than as an exhibit in the proceedings,
21 since he did not appear at a hearing and was not
22 sworn.

23 HEARING OFFICER KRAMER: Do you want to
24 weigh in, Mr. Haavik?

25 MR. HAAVIK: And I do agree. I was

1 present at all those meetings and I agree with Mr.
2 Wheatland.

3 MR. RATLIFF: We do, as well.

4 HEARING OFFICER KRAMER: Okay, so we'll
5 just receive this as additional public comment.

6 MR. RATLIFF: Yes.

7 HEARING OFFICER KRAMER: Okay. Then,
8 Mr. Wheatland, between the last hearing and today
9 you submitted a letter to the Air District that
10 talked about substituting certain emission
11 reduction credits for those that had previously
12 been offered?

13 MR. WHEATLAND: That's correct. One of
14 the suggestions that was made during the course of
15 this proceeding by the City and by members of the
16 public was that the applicant use, to the extent
17 possible, emission reduction credits from local
18 sources.

19 So we reviewed our inventory of credits
20 and identified some credits that are available in
21 the Hayward and San Leandro, in the local area.
22 And by letter of May 30, 2007, we proposed to the
23 Air District that we be allowed to apply those
24 credits to this project in lieu of other credits
25 that we had intended to use.

1 It's my understanding that the District
2 has accepted our proposal. And that's what we
3 would recommend for this proceeding.

4 HEARING OFFICER KRAMER: Okay, so first,
5 you're offering the May 30th letter to Brian
6 Bateman of the Bay Area Air Quality Management
7 District from Barbara McBride as an exhibit?

8 MR. WHEATLAND: Yes, we are.

9 HEARING OFFICER KRAMER: Okay, that
10 would be exhibit number 32. And for everybody's
11 information that's attached as attachment 2 to the
12 project owner's comments on the decision. I
13 noticed some copies were available outside.

14 Any objection to receiving that into
15 evidence?

16 MR. HAAVIK: I have no objection, but
17 I'm not sure if the attachment is complete. I
18 show -- and, Mr. Wheatland, maybe you can help
19 me -- I show just a single page, and it doesn't
20 show that it came from anyone other than the
21 Calpine letterhead, as well as an address to Brian
22 Bateman.

23 MR. WHEATLAND: You may have --

24 MR. HAAVIK: Am I missing a page or two?

25 MR. WHEATLAND: -- copy. Let me give

1 you a complete copy.

2 MR. HAAVIK: Okay. Then I have no
3 objection.

4 HEARING OFFICER KRAMER: So, Mr. Haavik,
5 did you have --

6 MR. HAAVIK: I have no objection.

7 HEARING OFFICER KRAMER: Mr. Ratliff?

8 MR. HAAVIK: Everything's fine. I do
9 have that second page now.

10 HEARING OFFICER KRAMER: Mr. Ratliff?

11 MR. RATLIFF: No.

12 HEARING OFFICER KRAMER: Okay, hearing
13 no objection then that will be received as exhibit
14 32.

15 I believe with the exception of a
16 document that we'll get to in a moment regarding
17 land use, those were all the outstanding exhibits.
18 Do the parties recall any others we need to
19 address?

20 MR. WHEATLAND: No, we have no others.

21 MR. HAAVIK: None.

22 HEARING OFFICER KRAMER: Okay. Then
23 let's go through the topics that are listed on the
24 agenda, in that order. There may be others. This
25 is not meant to limit the topics. This is just a

1 list I created after reviewing the applicant's
2 comments on the proposed decision.

3 Beginning with air quality, the
4 applicant has proposed an amendment to condition
5 AQSC-11. Did the other parties care to comment on
6 whether they agree or disagree with that proposed
7 change?

8 MR. RATLIFF: We're fine with the
9 change.

10 MR. HAAVIK: I have no objection.

11 HEARING OFFICER KRAMER: Okay, thank
12 you. Regarding noise, Mr. Wheatland, your
13 comments?

14 MR. WHEATLAND: Regarding noise, we have
15 made a suggestion which would have allowed the
16 applicant the option of using a sound wall or not,
17 depending on the results of the noise surveys.

18 Our intent here was to try to provide
19 some more flexibility for the project. But given
20 the concerns that have been expressed to us by
21 some parties, we are withdrawing this proposal.

22 And we are supporting the Noise-4
23 condition as it is written in the PMPD.

24 HEARING OFFICER KRAMER: Okay, thank
25 you.

1 Land use. The applicant proposed a
2 change to the timing of the requirement to merge
3 lots in condition Land-2. Could you explain your
4 initial proposal, Mr. Wheatland, and then any
5 modifications you made to it for the benefit of
6 the audience?

7 MR. WHEATLAND: Certainly. The initial
8 proposal had two recommendations regarding the
9 land use condition. The first recommendation was
10 to change the language of the land use condition
11 Land-2 to provide that the applicant would adjust
12 the boundaries of all parcels to which the project
13 owner holds fee title.

14 And the reason for this change is that
15 there is one parcel that we will be using as part
16 of the overall project site which we will acquire
17 by means of a lease. We have an option to lease
18 this parcel. It is commonly referred to as the
19 Aladdin parcel.

20 And the basic terms of the lease would
21 be that it would be a lease for a period of 40
22 years with two options to extend the lease for an
23 additional ten years each. So it could be for a
24 total of 60 years.

25 We would exercise that option after

1 receiving approval of this amendment and prior to
2 the commencement of construction.

3 And the Aladdin parcel is -- at the
4 request of the Hearing Officer we prepared a map
5 which we have distributed to the Committee. And
6 copies were available on the table outside for the
7 public.

8 This map reflects the Aladdin parcel in
9 reference to the project site. And it shows that
10 the Aladdin parcel will cover a portion of the
11 transmission line that will be owned by PG&E; a
12 portion of the access road to the project; and a
13 small portion of the switchyard for the project.

14 And so we would ask that the condition
15 be modified so as that we would be able to merge
16 all of the parcels, except, of course, for the
17 parcel that we would not own fee title, and that
18 would be the Aladdin parcel.

19 The second change that we asked for
20 we're withdrawing. Just for the benefit of the
21 record that change had asked that we would be able
22 to effect the merger of these parcels after the
23 completion of construction.

24 But upon further discussion with the
25 City, we believe that we will be able to exchange

1 the City parcel for the Reynolds parcel prior to
2 the commencement of construction. And therefore,
3 we would be able to effect the merger of that
4 parcel prior to the commencement of construction,
5 as the condition now provides.

6 So the language in the verification
7 section to Land-2 that we propose is not necessary
8 and we're withdrawing the proposal for that
9 language.

10 HEARING OFFICER KRAMER: Staff or the
11 intervenor, do you have any comments on that
12 proposal?

13 MR. RATLIFF: Well, staff has a very
14 strong preference that project sites be owned by
15 the project proponent. The reason being that
16 potential site control issues could arise in the
17 absence of such ownership.

18 However, it appears -- it's our
19 understanding, although we have not seen the lease
20 yet, that the long-term lease that has been
21 described to us appears to be one that would not
22 involve site control issues.

23 So, subject to a review of that lease, I
24 think we don't object to the configuration that
25 they're now proposing. But we also want to make

1 certain that there are no inconsistencies with
2 applicable zoning provisions or possibly building
3 code provisions. We've been unable to determine
4 that there are any inconsistencies with those, but
5 we would like to be able to at least qualify our
6 approval of this proposal until we've had an
7 opportunity to look at it a little bit longer.

8 HEARING OFFICER KRAMER: When could you
9 provide that report?

10 MR. RATLIFF: We will provide it with
11 our comments on Friday.

12 MR. WHEATLAND: We'll provide the staff
13 with a copy of the lease this evening.

14 HEARING OFFICER KRAMER: Could you
15 introduce that document as an exhibit so it will
16 be part of the record?

17 MR. WHEATLAND: I could. There is some
18 commercial sensitivity to the document. With the
19 consent of the Committee our preference would be
20 to introduce a copy of the option and the lease,
21 but with the price terms of the option to purchase
22 and the price terms of the lease redacted. So
23 that you would have all of the information other
24 than the price, itself.

25 HEARING OFFICER KRAMER: That's fine. I

1 think the price is not our concern.

2 MR. WHEATLAND: Okay. Then we'd ask
3 that it be identified as exhibit next in order.

4 HEARING OFFICER KRAMER: Did you
5 introduce the map yet? I don't believe you did.

6 MR. WHEATLAND: No, I have not.

7 HEARING OFFICER KRAMER: Okay, the
8 drawing superimposing the Aladdin parcel will be
9 exhibit 33. And then the option and the lease
10 will be exhibit 34.

11 And I presume, Mr. Wheatland, you're
12 moving those into evidence?

13 MR. WHEATLAND: Yes.

14 HEARING OFFICER KRAMER: Any objection
15 from the other parties?

16 MR. RATLIFF: No.

17 MR. HAAVIK: None at the present. I was
18 just handed a quarter-inch thick lease that I'd
19 like to review. And I guess I'll have those for
20 comments on Monday or Friday afternoon for the
21 Committee's review, as well as the Commission's
22 review.

23 HEARING OFFICER KRAMER: Okay, but you
24 don't have -- doesn't sound as if you have an
25 objection to the document being a part of the

1 record.

2 MR. HAAVIK: I don't.

3 HEARING OFFICER KRAMER: So both those
4 documents will be received into evidence.

5 Then the final issue that I had for --

6 MR. HAAVIK: Mr. Kramer.

7 HEARING OFFICER KRAMER: Yes.

8 MR. HAAVIK: I'd like to ask a question
9 of Mr. Wheatland for my edification on this
10 particular subject.

11 HEARING OFFICER KRAMER: Certainly. Go
12 ahead.

13 MR. HAAVIK: Thank you. Mr. Wheatland,
14 could you just give me, for my edification, a
15 short description or chronology of how the parcels
16 came to be? I'm a bit confused. I've been to
17 many many meetings and I was unaware of this
18 particular lease parcel. I thought there was some
19 pieces that you purchased from Alameda County --
20 from people in Alameda County, as well as from
21 either the City of Hayward or privately within the
22 City jurisdiction. And then they were being
23 merged into the City with the permission of
24 Alameda County and the Alameda County governments.

25 But now all of a sudden you have three

1 parcels. Which one is which? And do you hold fee
2 title to those three now, currently? As well as,
3 once we get through the lease, I assume the lease
4 is now valid. Or is everything up in the air
5 dependent upon the decision of the Commission?

6 HEARING OFFICER KRAMER: Mr. Wheatland,
7 before you answer, I brought with me for my own
8 edification some copies of a map of the four
9 parcels from your data response earlier in the
10 case.

11 You could perhaps use this to illustrate
12 it, if you'd like.

13 MR. WHEATLAND: One moment, please.

14 DR. BAUMAN: Mr. Kramer, do you want to
15 put it up on the screen?

16 HEARING OFFICER KRAMER: We'll try that.

17 (Pause.)

18 MR. WHEATLAND: All right. With
19 reference to the map that is on the wall, parcel 4
20 is the City parcel. That is a parcel that we are
21 acquiring by the exchange of the Reynolds parcel.

22 Parcels 2 and 3 are what we refer to as
23 the Eash parcels, E-a-s-h. Those are parcels that
24 we own in fee. And parcel 1 is the Aladdin
25 parcel; and that is a parcel that we will hold a

1 lease to.

2 And additionally I should mention that
3 parcel 12 is a parcel that we have leased for the
4 purposes of parking, construction parking and
5 laydown. And once the project construction is
6 finished, then that lease will also be completed.

7 MR. HAAVIK: So you have an additional
8 fifth property which is number 12 --

9 MR. WHEATLAND: Well, --

10 MR. HAAVIK: -- that is for construction
11 -- it's leased for construction purposes? It's a
12 temporary lease?

13 MR. WHEATLAND: It's a temporary lease,
14 yes.

15 MR. HAAVIK: Okay. And you currently
16 hold fee title to 4, 2 and 3?

17 MR. WHEATLAND: Yes.

18 MR. HAAVIK: Okay, thank you.

19 HEARING OFFICER KRAMER: You probably
20 misspoke. You don't have it to 4 yet --

21 MR. WHEATLAND: Well, you're right. We
22 don't currently hold it. When the project is
23 constructed we will hold fee title. We still have
24 not exchanged the -- parcel 4 is currently held by
25 the City.

1 Oh, yeah, I should say also, and Mr.
2 Argentine points out, that it's only a portion of
3 4 that is reflected by the red line. It's not the
4 entire 4, because 4 also includes the wastewater
5 treatment plant. So it's only the portion of 4
6 that is demarked by the red line.

7 HEARING OFFICER KRAMER: Just for
8 curiosity, which is the parcel that you're
9 trading? Which number on here?

10 MR. WHEATLAND: Twenty-two.

11 MR. HAAVIK: For 4?

12 HEARING OFFICER KRAMER: Yes.

13 MR. ARGENTINE: For a part of 4.

14 MR. WHEATLAND: Yes, --

15 MR. HAAVIK: Just, if you may
16 entertain -- let me entertain you just for two
17 minutes.

18 If I were to construct a home and/or a
19 large building here in the City of Hayward,
20 they're going to want to make sure that I have
21 title to a piece of property before they're going
22 to allow me to construct and those things.

23 And being new to this process of
24 constructing power plants, and please bear with
25 me, when do you anticipate that you will hold fee

1 title, as well as the lease be consummated, to
2 where you can walk on that property and say we
3 have it and can start digging?

4 MR. WHEATLAND: Under the terms of the
5 condition that we're discussing, the land use
6 condition, we would be required to have title and
7 to have merged the parcels at least 30 days prior
8 to the commencement of construction.

9 MR. HAAVIK: Thank you.

10 HEARING OFFICER KRAMER: But you
11 currently have at least an option on all of those
12 parcels, correct?

13 MR. WHEATLAND: Yes, that's correct.

14 HEARING OFFICER KRAMER: And, Mr.
15 Haavik, that's quite often how things are done
16 with power plants that --

17 MR. HAAVIK: I -- I certainly --

18 HEARING OFFICER KRAMER: -- the
19 transaction isn't closed --

20 MR. HAAVIK: Thank you. I understand
21 that, thank you very much.

22 HEARING OFFICER KRAMER: Okay, then
23 moving on to traffic and transportation, in the
24 proposed decision the Committee added some
25 conditions to condition Trans-10, which were

1 basically the various ways of notifying pilots of
2 the existence of the power plant.

3 Two of them, I believe, two or three
4 came from the Airport Land Use Commission's
5 resolution, and one came from the FAA letter.

6 And we were especially interested in
7 receiving comments about whether or not there were
8 any practical difficulties with any of those
9 measures, or something else that suggested that
10 they should be adjusted to make them more user
11 friendly to all the parties who are going to have
12 to implement this.

13 So, I'd like comments from the parties
14 on that issue. And then any other issues you have
15 with that whole topic.

16 MR. WHEATLAND: I'll begin. The staff -
17 - the applicant sees no practical problems to
18 implementing this. We support Trans-10 and each
19 of the items that have been listed by the
20 Presiding Member's Proposed Decision.

21 We did propose some slight wording
22 changes here just to make each of these
23 recommendations parallel in structure, but not in
24 any way to change the intent of these conditions.
25 We support each of them.

1 HEARING OFFICER KRAMER: You did say
2 something about clarifying that the outer boundary
3 marker lights should be on the fenceline, is that
4 correct?

5 MR. WHEATLAND: Yes, that's correct.
6 But we were just trying to clarify our
7 understanding of what the intent of this condition
8 was. If the Committee had a different intent with
9 respect to how the lighting should be constructed,
10 we would be happy to do it in that way.

11 HEARING OFFICER KRAMER: No. I think we
12 were borrowing, so we're looking for help if
13 there's a problem.

14 Mr. Haavik or staff, did you have any
15 comments on this topic?

16 MR. RATLIFF: The staff agrees with the
17 proposed changes that have been suggested. We
18 will propose our language, which is, I think,
19 entire consistent with Calpine's language, in our
20 comments on Friday.

21 HEARING OFFICER KRAMER: Mr. Haavik, did
22 you have anything?

23 MR. HAAVIK: Yes, I have some concern,
24 and I just wanted to voice it today, as well as I
25 will then make sure that my comments are on

1 Friday, or I believe it's Monday by 5:00, is that
2 right?

3 HEARING OFFICER KRAMER: Oh, no, let's
4 clarify that now. There is a Monday comment
5 deadline, but that's for comments to go to the
6 full Energy Commission for their meeting on
7 Wednesday of next week.

8 But the deadline for this proceeding or
9 for the Committee's work is this Friday.

10 MR. HAAVIK: Thank you.

11 HEARING OFFICER KRAMER: And I'll say
12 that again at the end, but it needs to come in by
13 email or arrive at the Commission on Friday.
14 Otherwise it will probably -- it may get
15 considered, but it will be harder to meld it into
16 the process if it comes in beyond that.

17 MR. HAAVIK: I'd like to maybe give a
18 short scenario and then tell you why I'm opposed
19 to this particular type of prose.

20 The Committee chose to override several
21 testimonies in regards to hazard and risk and felt
22 as though the FAA was your governing body to
23 authorize and/or make sure that the safety of
24 aviation was going forward, especially in this
25 locale, as well as not impacting the Hayward

1 Executive Airport.

2 Through that it was clear from the
3 decision that the FAA was the responsible party.
4 And I think Commissioner Geesman had a comment
5 about that early on.

6 I see in this Trans-10, by changing the
7 language, request that -- request that the FAA,
8 request that the FAA in all four of the ones that
9 are being changed doesn't give the owner any
10 responsibility in this whatsoever.

11 Unless I'm reading it incorrectly, they
12 requested, let's say the FAA says no. What if?
13 These are a bunch of what-ifs. But if it's a
14 what-if, then they say no, we're not going to do
15 anything. Then where's our mitigation, number
16 one, where is our safety valve, and what's going
17 to happen?

18 I think the owner needs to take
19 responsibility of a majority of this. And, in
20 fact, it will be in my comments that they're not
21 going to request, they're going to have the FAA do
22 it. If they can't do it, they can't build the
23 plant.

24 It seems only recent there has to be
25 some responsibility to negotiate with the FAA by

1 the owner after the Committee and possibly the
2 Commission, once approval is made, that it is an
3 FAA responsibility.

4 And I'll have those in my comments. And
5 I have no difficulty with the lighting structure
6 and that.

7 HEARING OFFICER KRAMER: The fence line
8 makes sense to you?

9 MR. HAAVIK: Yes. Excuse me, there are
10 a few aviators in the building right now. I see
11 three of them sitting down here. They may have a
12 comment in public comment in regards to the
13 placement of the lights, in regards to safety
14 hazard and that.

15 HEARING OFFICER KRAMER: I understand.
16 We'll be getting to them in a couple moments.

17 The applicant also had some other what I
18 would characterize as minor suggestions in its
19 comments. While I realize that both the other
20 parties are going to be filing comments on Friday,
21 at this point in time are you aware of any
22 particular disagreement with any of those other
23 comments that we haven't discussed yet
24 specifically?

25 MR. WHEATLAND: No.

1 MR. HAAVIK: No.

2 HEARING OFFICER KRAMER: Okay, thank
3 you. Let me go back to air quality for just a
4 minute, and then we'll start the public comment.

5 The other thing the Committee did was it
6 amended one of the requirements of the fireplace
7 and woodstove retrofit program to limit the
8 applicability of it after the first year to people
9 in Alameda County who reside west of the, I think
10 the term we used was the Oakland East Bay hills.

11 And we were wondering if that
12 description was considered by anyone to be too
13 ambiguous. In other words, are you aware of a
14 community where there might be an argument in the
15 compliance phase about whether this group of
16 people is in or outside of that zone.

17 Or if you believe that it's a clear
18 enough line of demarcation.

19 We're just looking ahead to make sure
20 that we, you know, don't cause compliance problems
21 if we can avoid them by being imprecise in our
22 language.

23 Does any party have any thoughts on
24 that? Mr. Haavik?

25 MR. HAAVIK: Yes, I have some thoughts.

1 I do agree with the Committee, and I believe Mr.
2 Wheatland and group, do you agree, also?

3 MR. WHEATLAND: Yes.

4 MR. HAAVIK: There are some areas of
5 Alameda County, especially at the top of the
6 hills, that would be confusing at best. In the
7 Oakland hills going up over into the Pleasanton,
8 San Ramon, Walnut Creek, a lot of it merges right
9 at the top. Some of it is in Contra Costa County;
10 some of it is in Alameda County.

11 So, if you say west of the hills, does
12 that mean at base elevation, or does it mean at
13 the 1500-foot elevation, which is about the
14 maximum for the hills over there.

15 And I think possibly you're looking at
16 11 or 12 communities that are involved; not only
17 the unincorporated areas of Alameda County, but
18 also Fremont, Newark, Hayward, San Leandro and on
19 north.

20 So I think what would best serve the
21 Committee and best serve this particular
22 compliance is to take and allude to exactly the
23 cities east of the hills and/or the unincorporated
24 areas -- excuse me, west of the East Bay hills;
25 then make it very definite as to which communities

1 in Alameda County would be part of this program.

2 HEARING OFFICER KRAMER: When you talk
3 about the unincorporated areas they, of course,
4 tend to drift over the hills, right?

5 MR. HAAVIK: Well, you have --

6 HEARING OFFICER KRAMER: Probably don't
7 have names.

8 MR. HAAVIK: -- Castro Valley, which
9 there is a delineation between Castro Valley and
10 there's a Pleasanton City limit. And obviously
11 Pleasanton is on the other side of the hills so it
12 wouldn't be part of it.

13 There is a delineation between the
14 unincorporated areas of Alameda County which could
15 be right at the top of the hill.

16 But you say west of the hills, again
17 that can be -- is it the folks in the hill area or
18 not? You know, it's cutting hairs, but I think
19 the issue would be to simply denote the cities
20 involved and the unincorporated areas involved.
21 And you could even do a GPS or get fancy and say
22 this is where it ends.

23 PRESIDING MEMBER GEESMAN: Is this a
24 matter best left to the Bay Area Air Quality
25 Management District?

1 MR. HAAVIK: Is that under their
2 purview?

3 PRESIDING MEMBER GEESMAN: Are they
4 going to be reviewing the details of the program
5 design?

6 MR. WHEATLAND: Yes.

7 PRESIDING MEMBER GEESMAN: That was my
8 understanding. I'm wary of us doing more harm by
9 trying to be more precise. Our guidance is west
10 of the hills. Interpretation may be something
11 best left to the District.

12 MR. HAAVIK: But in regard to compliance
13 and if there is an intent by the Committee and/or
14 the Commission when it is approved, and there is
15 some information provided, there's no comeback.
16 And there certainly is no comeback to the public.

17 And certainly the City of Hayward is
18 concerned with the emissions that's being emitted
19 by this particular plant. And the emissions, as I
20 believe you are concerned about where does it go
21 up the hill. That I think we need to be more
22 specific.

23 PRESIDING MEMBER GEESMAN: I agree. I
24 think those are good points.

25 MR. HAAVIK: You know, I think the City

1 of Hayward would like to participate in the
2 fireplace retrofit program. To what extent they
3 can participate in, I have no idea, because it
4 will be expensive and yet the rebate program is
5 not that much.

6 But, to the point of would we rather
7 slow down our fireplaces to reduce emissions in
8 the City of Hayward and participate in the
9 program, I think that we need to be very definite.

10 And if I can slip over into the other
11 comment that I had is that when you take -- and,
12 Mr. Wheatland, maybe you can help me out on this,
13 it's specific in this regard that there's 43-plus
14 tons involved in the mitigation, is that correct?

15 MR. WHEATLAND: 43.4.

16 MR. HAAVIK: 43.4. But in the
17 mitigation there's no -- in your PM10 program that
18 you've submitted to me, it clearly indicates how
19 much each house is worth, okay. Has that been
20 left to the Bay Area Air Quality Management
21 District to figure out when they approach the 43
22 tons and how many retrofit fireplaces they've
23 done, or woodstoves or furnaces?

24 Or is it just -- we just put it out
25 there as mitigation, which you will approve

1 eventually. And then it's up to somebody else to
2 take and say, oh, well, each house is worth, you
3 know, .5 sixth of a ton, a half a ton, maybe 1000
4 pounds of emissions?

5 I think if we're going to be -- and
6 we're very specific in other matters throughout
7 this entire proposed decision, but here I think it
8 falls apart. And I think the City of Hayward and
9 the residents would feel a hell of a lot more --
10 excuse me, would feel much more comfortable in
11 regards to making sure they know what they're up
12 against. Making sure that they know, yes, I know
13 that if I can convert my home I will be able to
14 contribute this. If they can afford it. And it's
15 not an economic hardship that they would be able
16 to participate.

17 Without knowing that it's just up in the
18 air. I mean you're going to have to market it, I
19 guess. I think there's a gentleman in the
20 audience that talked about marketing a number of
21 meetings ago, Mr. Armas. And I think that's very
22 important. And I think it should be in this
23 decision.

24 PRESIDING MEMBER GEESMAN: I think the
25 underlying logic of the decision is to defer

1 program design and County convention to the
2 District where the expertise resides. Remember,
3 if they're unable to satisfy the District with the
4 fireplace retrofit program, they then have to
5 procure offsets.

6 So I'm just wary of us venturing into
7 too much program design, which may be ill-advised.
8 And I think that what we've attempted to do is
9 appropriately recognize the expertise of the
10 District is leaving those details to them.

11 I recognize that doesn't provide the
12 level of certainty that some members of the
13 community would like to see now. But as we've
14 discussed this at each of the several workshops
15 we've had, there always seems to have been a
16 consistent delegation of those details to the
17 District because of their recognized greater
18 expertise.

19 MR. HAAVIK: Is a representative of the
20 District here today?

21 HEARING OFFICER KRAMER: I don't believe
22 so.

23 MR. HAAVIK: Mr. Wheatland, in your past
24 experiences, Barbara, maybe in your past
25 experiences, in the couple to the south, did the

1 Bay Area -- is that also the Bay Area Air Quality
2 Management District?

3 MR. WHEATLAND: That was. And in that
4 program they did a strict accounting to make sure
5 that the goal was fully met. And we set
6 milestones and we reported on those milestones
7 quarterly in a public way, both to the Commission
8 and to the public on how those were being met.

9 MR. HAAVIK: So it's all publicly
10 available?

11 MR. WHEATLAND: Yes, it will be publicly
12 available.

13 MR. HAAVIK: Thank you.

14 HEARING OFFICER KRAMER: Okay. I
15 believe that covers all the -- we've admitted all
16 the exhibits and we've covered all the topics in
17 the reopened evidentiary hearing.

18 Now is the time for public comments.

19 MR. HAAVIK: Excuse me, I'm sorry. I'm
20 looking at my list here and I did not ask one
21 question of Mr. Wheatland in regards to the sound
22 wall.

23 HEARING OFFICER KRAMER: Oh, okay, go
24 ahead.

25 MR. HAAVIK: The sound wall, as

1 proposed, which has been described, would not
2 change. It is going to be what is in the report,
3 what is in the proposal. So there would not be
4 any visual difference?

5 MR. WHEATLAND: Yeah, there's not going
6 to be any change to that condition. There will be
7 no visual difference, that's correct.

8 MR. HAAVIK: Great, thank you.

9 HEARING OFFICER KRAMER: Okay, let's
10 then open it up for public comments. Did anyone
11 fill -- some of you filled out blue cards. If you
12 could pass those to -- Mr. Shaw, would you collect
13 those? Thank you.

14 And again, I may have to slow you down
15 because I have to take careful notes for my work
16 in the next few days. And if somebody has already
17 said what you want to say, feel free to just say
18 that you agree with them.

19 So, I saw Ms. LePell's hand up. So why
20 don't you, since I recognize you, why don't you
21 come up and go first. Would you like to go first?

22 MS. LePELL: Good evening,
23 Commissioners, good evening, staff, good evening,
24 everybody else. And hello, Mr. Kramer and Mr. --
25 where did he go?

1 This is an interesting position for me.

2 I'm Audrey LePell --

3 HEARING OFFICER KRAMER: One more ground
4 rule I should mention. This should be just
5 emblazed in my brain. When you first come up
6 please state your name and spell your name for the
7 benefit of the court reporter. And then your name
8 will be properly spelled in the transcript that
9 will be produced eventually.

10 MS. LePELL: Thank you. I wanted to say
11 my name is Audrey LePell, A-u-d-r-e-y, LePell,
12 L-e-P-, as in Paul, -e-l-l.

13 I wanted to be one of the last speakers,
14 so I want to ask if I could have the ability to
15 speak at the end, also. Is that possible?

16 HEARING OFFICER KRAMER: As long as you
17 don't repeat yourself and you're brief. As long
18 as you don't repeat yourself and you're brief.

19 MS. LePELL: Thank you. I want to thank
20 this gentleman, I've forgotten your last name.

21 MR. SHAW: Shaw.

22 MS. LePELL: Mr. Shaw and Mr. Kramer; I
23 talked to you both today. And I want to say thank
24 you for the ability to be here, because this is an
25 interesting experience for me considering what

1 happened.

2 So what happened? I asked your staff
3 person, both at the last staff report meeting and
4 at your meeting in July, to be notified by email
5 or regular mail or any mail on any of these issues
6 and I received zero notification of anything.
7 Nothing.

8 And I thought what is going on here.
9 So, because I have friends who are involved in
10 this process, I am here to speak to you. But the
11 timing and the procedures I questioned.

12 So we saw each other in July and I will
13 start with the ending at the beginning. At the
14 end of the meeting, and I left at 12:15 in the
15 morning, and I arrived here at 4:30 in the
16 afternoon. Thanks for the sandwiches and the
17 food.

18 I thought I heard, we'll see you in
19 October by someone. Now, Mr. Kramer, today said
20 that might have been an offhand remark on the part
21 of someone, perhaps Mr. Geesman, I'm not sure.

22 So I didn't prepare myself for today or
23 tonight, or tomorrow because I was -- I took a
24 vacation last week. So I will reiterate some of
25 the things that I spoke to at the workshop in

1 July.

2 But it's confusing to me because can you
3 talk to me? Can you respond to me, or do you have
4 to be quiet?

5 PRESIDING MEMBER GEESMAN: Well, I will
6 say I recall at the end of the last workshop Mr.
7 Wheatland asking if we would be able to schedule
8 this for a determination at the Commission
9 business meeting by September 12th. And our
10 conclusion being we'll see what we can do. And I
11 believe that's all reflected in the transcript
12 from that workshop.

13 So I'm not certain where you would have
14 gotten the October date from. I don't think it
15 was from me.

16 MS. LePELL: Thank you. I don't have a
17 copy of the transcript, either. I don't have a
18 copy of the amendment. I don't have a copy, I
19 mean, of the results of my remarks and everyone
20 else's remarks the night that we appeared in front
21 of you.

22 So, until next Wednesday I won't have
23 the ability to comment on that. So I will go to
24 my general comments.

25 So you can talk to us. You don't have

1 to just be quiet, you can speak to us citizens.

2 Thank you.

3 Okay. I want to clarify one thing. I
4 am a member of an organization called HASPA,
5 Hayward Area Shoreline Planning Agency, CAC,
6 Citizens Advisory Committee. I don't represent
7 them. I have been a member for over 33 years.

8 I reported at the first workshop that I
9 attended back in July, or was it June, I think it
10 was July, that HASPA Citizen Advisory Committee
11 took a position against the Russell City Power
12 Plant.

13 I discovered through Janice Delfino, our
14 Chairperson -- we have two Chairs -- I was in
15 error. I was not authorized to speak for the
16 Committee. I hope I clarified that in the
17 workshop.

18 But we took a position that may not have
19 been against Russell City's Power Plant, but it
20 concerned what was happening to our shoreline,
21 because the Russell City Power Plant is not on
22 technically the shoreline. It might be within the
23 jurisdiction, but we, as citizens, look at the
24 shoreline as a total not just always the
25 jurisdictional boundaries. So I want that

1 clarified. Ms. Delfino will be here tonight and
2 will speak to that, I hope.

3 Okay, secondly. I'm the president of an
4 organization called CATS, Citizens for Alternative
5 Transportation Solutions. I stated in writing at
6 the transportation workshop our organization,
7 which is -- I don't mean the transportation
8 workshop, I mean in the workshop that was held
9 here -- our organization took a position opposing
10 both power plants. That's our official position.

11 There are many organizations that
12 probably you will hear from tonight, and they have
13 their own opinions. But our organization, which I
14 represent, I'm authorized to speak for them,
15 opposes both power plants.

16 And you may say why. Because it
17 increases transportation usage around 880, which
18 is, as you know, about to be reconstructed; both
19 at highway 92 and at 238. And also increases more
20 trucks, more people, more people going back and
21 forth, although I was told I think it was
22 something like, after it's built, it might be 15
23 trips per day.

24 But I wasn't really referring to the 15
25 trips per day. I was referring to the

1 construction of both power plants, and how it will
2 affect all of the traffic on highway 880 and its
3 own reconstructions. So it's a larger picture
4 than just the after effects of both power plants.
5 I want that clarified.

6 So, now questions, please. This is
7 concerns. Land use. Has the City of Hayward
8 officially agreed to sell to Calpine the property
9 that is planned for the power plant?

10 HEARING OFFICER KRAMER: Applicant,
11 briefly.

12 MR. WHEATLAND: Yes, they have. They
13 did it several years ago.

14 MS. LePELL: Does that mean that it has
15 actually been sold?

16 MR. WHEATLAND: The City has entered
17 into an agreement with Calpine to exchange the
18 city parcel for a parcel that Calpine owns. And
19 that actually was voted upon by the City Council
20 in a public meeting.

21 MS. LePELL: And the City Council agreed
22 recently, or was it back 2002, please?

23 MR. WHEATLAND: I'm not so sure on the
24 specific date, but I believe it was in -- help me
25 out, Doug, was it 2005 when the cooperation

1 agreement was re-executed?

2 DR. DAVY: Probably.

3 MR. WHEATLAND: I think it was in 2005.

4 MS. LePELL: 2005. That was publicly
5 noticed and voted upon by the majority of the City
6 Council, is that what you're saying?

7 MR. WHEATLAND: Yes.

8 MS. LePELL: And you don't know the
9 date? Or do you know the date?

10 MR. WHEATLAND: I can find the date. It
11 will take me a couple minutes.

12 MS. LePELL: Thank you. The reason I
13 ask that is because that went right by me and my
14 organization. And might have gotten literally by
15 other people, too, in 2005. I'm not saying that's
16 an excuse. I'm just saying that may have if that
17 did happen.

18 Okay. So, the other property owners,
19 have they, in writing, are they all together to
20 sell all this property to Calpine? And I don't
21 know who they are.

22 HEARING OFFICER KRAMER: I think Mr.
23 Wheatland earlier said that they either had title
24 or options to buy or lease all of these parcels.

25 MS. LePELL: Is that in writing in front

1 of you?

2 HEARING OFFICER KRAMER: That's not an
3 exhibit. That's a testimony that they had
4 provided in their -- both in their application and
5 later on in the process.

6 PRESIDING MEMBER GEESMAN: Do you have
7 reason to think that they don't?

8 MS. LePELL: I guess I didn't hear the
9 answer.

10 PRESIDING MEMBER GEESMAN: Do you have
11 reason to think that they don't?

12 MS. LePELL: I don't know, but the
13 Aladdin property I didn't know about till I walked
14 in tonight.

15 Did you know before tonight? When did
16 you know, please?

17 PRESIDING MEMBER GEESMAN: We're not
18 going to conduct the proceeding that way.

19 MS. LePELL: Rhetorical question. Is it
20 the position of the two Commissioners to state
21 their decisions before the public has had a chance
22 to say or give the Commissioners additional
23 information on the EIR or the addendum? Is that a
24 common practice by the Energy Commissioners?

25 HEARING OFFICER KRAMER: Well, --

1 PRESIDING MEMBER GEESMAN: We've had
2 hearings down here. We've published a proposed
3 decision. We're taking comments on the proposed
4 decision tonight. We'll make a recommendation to
5 the full Commission next Wednesday.

6 MS. LePELL: Even though you've already
7 stated in the public press your position?

8 PRESIDING MEMBER GEESMAN: The only
9 thing we've stated is in our proposed decision,
10 which is a publicly available document.

11 MS. LePELL: Is that common practice,
12 please?

13 PRESIDING MEMBER GEESMAN: For the last
14 32 years.

15 MS. LePELL: Thank you. And with regard
16 to the unincorporated areas, are the properties
17 all in the City limits that will be purchased for
18 Calpine's use? Or are there some in the County?

19 HEARING OFFICER KRAMER: They were all
20 annexed, I recall, I think in March. There was
21 some evidence provided on that, either orally or
22 in some of the testimony at the previous hearing.

23 But the annexation was completed.

24 MS. LePELL: I'm sorry?

25 HEARING OFFICER KRAMER: The annexation

1 was completed, so they are in the City --

2 MS. LePELL: And that all the properties
3 are in the City limits?

4 HEARING OFFICER KRAMER: Yes.

5 MS. LePELL: Thank you. Did the County
6 of Alameda comment to you about what will happen
7 to the unincorporated areas down there at all, in
8 terms of traffic, land use, influences, effects
9 for this particular evening?

10 HEARING OFFICER KRAMER: I think you
11 need to change your approach here and tell us what
12 you do or don't like about the decision. Because
13 the time to ask about the information that was
14 received was at the last hearing.

15 MS. LePELL: Well, I'm not trying to be
16 disrespectful. It's just that I don't have any
17 information to go on. And my thought was if you
18 have the information, then you would share it with
19 the public in some way, with notices out in the
20 lobby and information and background.

21 Because, I told you, Mr. Kramer, on the
22 telephone I had nothing to go by except the
23 original EIR, which I commented on shortly at the
24 workshop. And I have this, but I have no time --
25 this isn't even the document that I'm supposed to

1 be responding to tonight is my understanding.

2 HEARING OFFICER KRAMER: Well, we make
3 our best efforts to make sure that everyone knows
4 about the decision. It's unfortunate that your
5 vacation intervened. But we cannot personally
6 deliver everything to everyone. At some point you
7 have to be able to be able get it from staff or
8 download it from the internet.

9 I saved an extra copy of the decision
10 for you since you said you hadn't received it. I
11 came with a couple, and you're welcome to take
12 that when you step down there.

13 MS. LePELL: Thank you.

14 HEARING OFFICER KRAMER: But we're past
15 the point where we're collecting additional
16 information from agencies.

17 Staff may have received some information
18 from the County, they may not have. Sometimes
19 counties comment on these things, sometimes they
20 don't. So I can ask staff every so briefly, did
21 you receive any comments from the County of
22 Alameda about this project?

23 MR. RATLIFF: I don't recall having seen
24 any, but I can't --

25 MR. SHAW: Neither have I.

1 MR. RATLIFF: Okay.

2 HEARING OFFICER KRAMER: Okay. What's
3 your next comment?

4 MS. LePELL: I wanted to thank you for
5 your attention. I hope this is -- write to you by
6 Friday. And I also wanted to say that I used to
7 be a planning commissioner for the County of
8 Alameda for nine and a half years. And we took
9 testimony, and then we made our decisions. And if
10 we didn't have enough information and the public
11 said we didn't have enough information, we really
12 seriously thought maybe we needed more
13 information.

14 And maybe in this case maybe something
15 happened, because HASPA CAC had an entire
16 documents for you people, and I was here. I came
17 in 2002, and I don't really remember whether I
18 spoke or not, but I knew that the HASPA group
19 would be speaking. And Janice Delfino, our Co-
20 Chair, stated to me yesterday on the phone that
21 many people came and spoke to you. Whether it was
22 you gentlemen or someone else, I can't answer
23 that.

24 So there is a lot of information,
25 technical information. Because the Citizens

1 Advisory Committee, they are very technically
2 oriented, along with our staff.

3 Thank you.

4 PRESIDING MEMBER GEESMAN: Well, it's
5 important, though, to recognize in 2002 the
6 Commission did, in fact, make a decision on the
7 Russell City facility and approved the license.
8 And this proceeding is an amendment to that
9 license.

10 So, the --

11 MS. LePELL: Thank you.

12 PRESIDING MEMBER GEESMAN: -- record
13 that was developed in 2002 has been incorporated.
14 It relates to the license that we're now
15 considering whether or not to allow an amendment
16 to.

17 MS. LePELL: I appreciate that. But Mr.
18 Shaw told me at the workshop that they did not
19 receive, nor had he ever heard of HASPA.

20 PRESIDING MEMBER GEESMAN: But I
21 suspect, and again, I wasn't a part of that
22 conversation, I suspect that the question he was
23 answering related to this amendment and not to the
24 2002 license decision, itself. Those aren't
25 necessarily inconsistent facts.

1 MS. LePELL: I understand. But I want,
2 for the record, that it's my understanding that in
3 2002 the Commission, whoever was on it at the
4 time, did not receive the information that was
5 written out by staff to be given to the City
6 Council and forwarded on to you as information.

7 It's a matter of record. So, it's
8 incredibly important, in my opinion, because HASPA
9 protects and wants to have the best shoreline.
10 And it's very protective of our Hayward shoreline
11 in all manners, aesthetically and environmentally
12 and for air quality, and particularly because our
13 shoreline is on the flyway, for the shorebirds
14 from Alaska to South America.

15 Thank you.

16 HEARING OFFICER KRAMER: Here's your
17 copy of the decision.

18 MS. LePELL: Thank you.

19 HEARING OFFICER KRAMER: Next speaker
20 Carol Ford.

21 MR. WHEATLAND: And while the next
22 witness is approaching, I was asked the date of
23 the City's action on the cooperation agreement.
24 And the City acted on the cooperation agreement in
25 resolution 05-125 on October 11, 2005. And in

1 resolution 06-068 on May 23, 2006.

2 MS. FORD: Good evening, Commissioners
3 and Mr. Kramer. I just wanted to comment briefly
4 because you were talking about -- I'm sorry --

5 REPORTER: Could you spell and state
6 your name for the record, please?

7 MS. FORD: I'm sorry. Carol Ford, like
8 the car. And I'm with the California Pilots
9 Association, Vice President of Region 3.

10 And I wanted to speak this evening a
11 little bit about mitigations that were discussed;
12 and talk about the FAA's current letter to you
13 from July 18th, which suggests on page 2 -- or 3,
14 that it -- one of the main things it says, it
15 talks about buildings and it doesn't address
16 plumes because of the defects in the form.

17 But it also talks about the report
18 recommendation stated that an amendment to the
19 Aeronautical Information Manual be made to publish
20 advisory wording that overflights at less than
21 1000 feet vertically of the plume generating
22 industrial sites should be avoided.

23 And to discuss that that's not possible
24 at this airport because the traffic pattern for
25 airplanes less than a mile and a half away from

1 this is that is at 600 feet above ground level,
2 which equals 650 feet mean sea level, because the
3 height of the -- the altitude of the airport is 50
4 feet. So you can't fly above this site at 1000
5 feet and above.

6 And therefore, I don't know how you can
7 mitigate that. That's my comment.

8 HEARING OFFICER KRAMER: I think --

9 MS. FORD: I am --

10 HEARING OFFICER KRAMER: -- the decision
11 assumed that planes would not be flying over this
12 power plant, and still concluded that the loss, if
13 you will, of that air space was not either a
14 significant impact or did not violate the City's
15 ordinance.

16 So, it was in the decision's mind, so to
17 speak, that planes basically would be not flying
18 over it at all, those coming to or from the
19 Hayward Airport.

20 MS. FORD: Well, I respectfully
21 disagree. And the California Pilot's Association,
22 that's our disagreement with that, because it's
23 not very easy to do in such confined air space.
24 Especially because other airplanes will be flying
25 at higher altitudes above this. There's

1 restricted airspace above it and you can't go at
2 1000 feet or above in this area. So I think this
3 is a serious defect.

4 Additionally, I've been speaking to the
5 FAA about revising their letter, because this is
6 so serious. And that there shouldn't be power
7 plants within five miles of an airport for these
8 reasons.

9 And that Blythe Airport, with their
10 plume velocity, and people flying over it even at
11 1000 feet, have come into great difficulty. And I
12 don't want that repeated here. And that's why I'm
13 here tonight.

14 PRESIDING MEMBER GEESMAN: What reaction
15 did you get from the FAA?

16 MS. FORD: They're willing to talk to me
17 about it and to the state. And we have our
18 meeting set up for next week about this. And the
19 person that I addressed was the -- he's the
20 manager of the Western Pacific Region, so he
21 covers the states of California and Nevada, Hawaii
22 and the South Pacific. And Arizona, sorry.

23 PRESIDING MEMBER GEESMAN: We'd be
24 interested in hearing anything that the FAA chose
25 to submit to us in writing.

1 MS. FORD: If I can get it sooner than
2 that, I will.

3 PRESIDING MEMBER GEESMAN: Thank you.

4 MS. FORD: As soon as I can, I will.
5 Thank you. Anything else?

6 HEARING OFFICER KRAMER: No.

7 MS. FORD: Nothing else from me.

8 HEARING OFFICER KRAMER: You're
9 finished? Okay. Thank you.

10 MS. FORD: Thank you.

11 HEARING OFFICER KRAMER: Andy Wilson.

12 MR. WILSON: Good evening. I'll pick up
13 where Carol left off. In talking with -- my name
14 is Andy Wilson. I'm a resident of Hayward. I'm a
15 pilot with an instrument rating.

16 Just for record purposes, there's been a
17 controversy about the FAA letter in Washington,
18 D.C. No response. So, on Friday I called Marian
19 Blakeley, that would be the Administrator for the
20 FAA in Washington, D.C.

21 Of course, she doesn't pick up the
22 phone. But one of her staff members did. And
23 what I did was just simply ask that -- I described
24 the letter, dated the letter from California
25 Energy Commission to the FAA. And asked if they

1 had docketed that letter. They couldn't find it.

2 So, they said let us look again. About
3 15 minutes later I received a phone call back.
4 And they said, no, could you send it to us. And I
5 said, no, I won't do that. I said would you call
6 Jim Adams at the CEC; tell him that Andy Wilson
7 gave you a call, was making an inquiry if the FAA
8 had, in fact, received the letter.

9 About 15 minutes later I called Jim and
10 said, did you get a call from the FAA. He said,
11 yes, I did, thank you very much. And he said, not
12 only did I get a call from the FAA, they've
13 directed me who I should direct the letter to.

14 So, my first question, if I may, if we
15 have an answer to that, is there anyone here on
16 staff that can confirm that I did talk to Jim?

17 MR. RATLIFF: I can't.

18 MR. WILSON: Okay. So, --

19 MR. RATLIFF: But I mean, what -- does
20 it need to be confirmed or --

21 MR. WILSON: All I want to do is just
22 make a confirmation that I did have a conversation
23 with Jim. So you can't do that?

24 MR. RATLIFF: Well, I believe you
25 anyway. But I can't confirm it.

1 (Laughter.)

2 MR. SHAW: I cannot, either. And I
3 believe you.

4 MR. WILSON: Okay, okay. So, here's the
5 question. What I want to, just for the record,
6 was to explain why you haven't heard from the FAA
7 in Washington, D.C.

8 Now, the two dates that were mentioned
9 on a written response, so it appears that Carol
10 Ford, who just spoke, is trying to get a response
11 out of the FAA locally. I have no idea when or
12 if, but we do have a contact, or I should say the
13 CEC now has a contact in Washington, D.C.

14 Whether they would, in time, have a
15 written response, I don't know. I'll address that
16 in a couple minutes.

17 HEARING OFFICER KRAMER: Okay, let me,
18 to fill in my gaps, did you give us the name of
19 the aide you spoke to?

20 MR. WILSON: I will do that through Paul
21 Haavik on the written --

22 HEARING OFFICER KRAMER: Didn't you just
23 say it today, though? You said somebody picked up
24 the phone and said --

25 MR. WILSON: Yes, I left my note home.

1 HEARING OFFICER KRAMER: Oh, okay.

2 MR. WILSON: As a matter of fact, I have
3 two names and two phone numbers for you.

4 HEARING OFFICER KRAMER: But not here
5 with you?

6 MR. WILSON: I can -- not right here.

7 HEARING OFFICER KRAMER: Okay.

8 (Pause.)

9 HEARING OFFICER KRAMER: Were you
10 waiting for me?

11 MR. WILSON: I'm waiting for you.

12 HEARING OFFICER KRAMER: Oh, sorry. No,
13 go ahead. Go ahead. I thought you were checking
14 your notes.

15 MR. WILSON: No, I didn't want you to
16 burn that pen up, so --

17 HEARING OFFICER KRAMER: Okay. No, it's
18 doing good.

19 MR. WILSON: All right, I don't need an
20 answer, but I would just like to make a comment on
21 air space. And I think you treat it lightly as,
22 well, we'll just reduce the air space. And I'm
23 not putting the blame on anybody, but anytime
24 anyone reduces the airspace within an airport you
25 cause a compression of the aircraft to come closer

1 together. And that depends on the type of
2 aircraft, where they are, whether they're IFR,
3 VFR.

4 And you've heard of the aircraft that
5 was on the runway -- or, excuse me, the taxiway
6 for 13 hours. There was another aircraft that was
7 on the taxiway for seven hours. And all I want to
8 point out is anytime you begin closing off
9 airspace, whether it be noise abatement, whether
10 it be power plant, whatever, and it doesn't matter
11 whether it's the California Energy Commission or a
12 building or a tower, you continue to compress the
13 system.

14 Recently Marian Blakeley gave a speech,
15 and what she said was -- the title of it, it's on
16 the internet, recently she spoke -- fixing the
17 summertime blues.

18 And to paraphrase, what they've had to
19 do is they now have an adaptive compression
20 algorithm to compress aircraft even closer
21 together. They couldn't do it before because of
22 the computers and the system that they have.

23 It's been also said the system is
24 antiquated for IFR traffic and keeping track of
25 traffic. But it's the cumulative effect, whether

1 it be here in California, across the U.S. or in
2 country to country. Just a comment.

3 On the documentation in your Trans-10
4 there are really two charts for the area. One is
5 the VFR terminal area chart and that's what they
6 refer to, is to putting some kind of NOTAM near
7 the airspace or at the airspace of the airport.

8 HEARING OFFICER KRAMER: Do you have
9 that condition in front of you?

10 MR. WILSON: Sure.

11 HEARING OFFICER KRAMER: Because I'm not
12 -- I see them speaking of the sectional chart.

13 MR. WILSON: Yes.

14 HEARING OFFICER KRAMER: That's the one
15 you're talking about?

16 MR. WILSON: Right. And that's item
17 what?

18 HEARING OFFICER KRAMER: It's the third
19 bullet.

20 MR. WILSON: Third bullet. Request that
21 the FAA revise the San Francisco sectional chart
22 to include a marker showing where the plant is
23 located and adding a recommendation about avoiding
24 overflight and -- it doesn't have a -- doesn't say
25 anything. So, what's the and for?

1 HEARING OFFICER KRAMER: That's going to
2 be a typo.

3 MR. WILSON: I didn't think you'd want
4 to add something.

5 HEARING OFFICER KRAMER: I think --
6 well, that was --

7 MR. WILSON: Okay, there are two.
8 There's a terminal area chart and a sectional
9 chart. Now, the sectional is a much broader area.
10 It may or may not -- you may or may not be able to
11 fit the symbol on there, but I just want to bring
12 it to your attention that there are two charts for
13 the Bay Area and specifically for Oakland Airport,
14 Hayward Airport, et cetera.

15 HEARING OFFICER KRAMER: So would a
16 pilot use --

17 MR. WILSON: He uses both.

18 HEARING OFFICER KRAMER: Both.

19 MR. WILSON: He uses one when he's
20 flying within the Bay Area. And the other is
21 within the Bay Area and shows further out.

22 HEARING OFFICER KRAMER: So do you think
23 it's appropriate to add the --

24 MR. WILSON: They're both VFR charts--

25 HEARING OFFICER KRAMER: -- to both?

1 MR. WILSON: Yes.

2 HEARING OFFICER KRAMER: Okay, so give
3 me the name of that second. You call it a
4 terminal area chart, is that right?

5 MR. WILSON: There's a terminal area
6 chart and a sectional chart. There are two
7 different charts. They're both VFR charts.

8 PRESIDING MEMBER GEESMAN: So we've
9 called the one the San Francisco sectional chart.

10 MR. WILSON: Yes.

11 PRESIDING MEMBER GEESMAN: What would we
12 call the second one?

13 MR. WILSON: I have on here -- can I
14 approach?

15 PRESIDING MEMBER GEESMAN: Can you just
16 read it?

17 HEARING OFFICER KRAMER: It says
18 terminal area chart.

19 PRESIDING MEMBER GEESMAN: Is it the San
20 Francisco terminal area chart?

21 MR. WILSON: Yeah, that's right there.

22 PRESIDING MEMBER GEESMAN: Okay.

23 HEARING OFFICER KRAMER: So it could say
24 San Francisco sectional and terminal area charts,
25 and that would --

1 MR. WILSON: That's correct.

2 In addition to that, there's a handout
3 that the City of Hayward Airport hands out to
4 pilots. And what will have to happen is this will
5 have to be corrected, also.

6 So, if you notified the FAA for the FAA
7 changes, they absorb the costs. But this is
8 produced by the City of Hayward Airport and it's a
9 cost to the City of Hayward.

10 So I will defer to the City of Hayward
11 if they want to have the power plant -- power
12 company pay for it or not. There's one for
13 helicopters, and there's one for fixed plane.

14 ASSOCIATE MEMBER BYRON: Mr. Wilson, do
15 you know how often that document is revised?

16 MR. WILSON: No, I don't. Well,
17 whenever there's a change for the airport, so it
18 could be absorbed within the next change.

19 ASSOCIATE MEMBER BYRON: And the --

20 MR. WILSON: But you would have to --

21 ASSOCIATE MEMBER BYRON: And the
22 sectional and the terminal area charts?

23 MR. WILSON: They're updated on a
24 regular basis.

25 ASSOCIATE MEMBER BYRON: Okay. Do you

1 have any reason to believe that the FAA would not
2 willingly accept these recommended changes to
3 those maps?

4 MR. WILSON: No. They would. They
5 would accept that, I believe.

6 ASSOCIATE MEMBER BYRON: Okay.

7 MR. WILSON: And, as a matter of fact,
8 it doesn't have to be an FAA person to request
9 that.

10 ASSOCIATE MEMBER BYRON: All right.

11 MR. WILSON: It would be the Hayward
12 Airport could do it. But I think what our
13 intervenor was saying was the power company has to
14 take certain responsibilities to make sure those
15 are done.

16 So, as a matter of fact, I think even
17 the power plant people could call the FAA and ask
18 and request that it be put in.

19 ASSOCIATE MEMBER BYRON: Thank you.

20 MR. WILSON: Last bullet. Last bullet.

21 HEARING OFFICER KRAMER: Okay.

22 MR. WILSON: Trans-10. Trans-10, last
23 bullet. Advise the Hayward Executive Airport ATC
24 tower in writing at least ten days in advance.
25 The problem is that the Hayward Airport doesn't

1 operate 24 hours a day. So, what happens is you
2 contact the Oakland Airport to get your clearances
3 and to depart in those off hours.

4 So I would like to add the Oakland
5 Airport. So, for example, when you're departing
6 in the off hours you actually call the Oakland
7 Airport when there's no one in the Hayward tower.

8 So consequently what happens is you're
9 in contact with them. You depart. Then you
10 change your radio to Bay approach. You're in Bay
11 approach, and then they hand you off.

12 HEARING OFFICER KRAMER: We have a
13 question for you. Commissioner Geesman notes that
14 the fifth bullet mentions -- and this one I think
15 came from the ALUC and I didn't catch -- it
16 mentions the sectional chart again.

17 So that appears to be a duplicate of the
18 third bullet in that aspect.

19 MR. WILSON: Request that the FAA --
20 well, this is -- airport directory and the San
21 Francisco sectional.

22 HEARING OFFICER KRAMER: Right. So the
23 sectional's already been mentioned.

24 MR. WILSON: Okay, so --

25 HEARING OFFICER KRAMER: Right. Is the

1 airport facility directory a separate --

2 MR. WILSON: Separate --

3 HEARING OFFICER KRAMER: -- publication?

4 MR. WILSON: -- manual. Yes.

5 HEARING OFFICER KRAMER: And do you feel

6 it would be useful to include --

7 MR. WILSON: I'd say --

8 HEARING OFFICER KRAMER: -- a note in --

9 MR. WILSON: -- just do the manual as a
10 separate item, or list all three as one item. So,
11 put the two charts as one item and put the manual
12 or directory as its own item.

13 HEARING OFFICER KRAMER: But you think
14 it's important to keep the manual in?

15 MR. WILSON: Yes, absolutely.

16 HEARING OFFICER KRAMER: We're ready for
17 your next comment.

18 MR. WILSON: Okay. On the verification,
19 ASOS. That typically, the way the Hayward Airport
20 operates, and I'll defer to the City, but
21 typically what happens is the person in the tower
22 looks or calls in and gets the weather
23 information. They write it down on a piece of
24 paper. And what they do is they record that.

25 And so when you are coming in -- when

1 you're approaching the Hayward Airport, ATIS, when
2 you pick up the weather and any special NOTAMs or
3 notifications, then the ATIS might be alpha-bravo
4 or whatever, and they go through the alphabet and
5 it rotates around, has nothing to do with any part
6 of the day.

7 So the automatic system, I don't know if
8 that's going to be appropriate. And on behalf of
9 the power plant, I don't know -- this will have to
10 be negotiated. So, you could end up in a
11 situation where they don't want -- the FAA won't
12 want to put the NOTAM on top of automatic weather
13 station notification.

14 And I understand that's a problem down
15 in Blythe. So, I don't want you to put something
16 on paper that the power company can't meet.

17 PRESIDING MEMBER GEESMAN: Well, that's
18 our fourth bullet. You're focused on the
19 verification portion, but --

20 MR. WILSON: Yeah, for the verification.
21 So, --

22 PRESIDING MEMBER GEESMAN: The
23 requirement itself is the fourth bullet in Trans-
24 10.

25 MR. WILSON: Correct. Typically that's

1 up, the weather from the Oakland. Then what they
2 do is they write it down on a sheet of paper.
3 Who's ever in the tower records it. And then when
4 you pick it up on that frequency then it's -- so
5 something's going to have to be worked out between
6 the Hayward Airport, probably the airport manager.
7 Someone from the staff ought to ask or work that
8 out. Either they're going to use the ATIS or
9 they're going to use the ASOS.

10 The other issue is that if you put the
11 NOTAM on top of the weather, the FAA may not allow
12 you to do that. I'm just raising a flag. That's
13 up to whatever you do.

14 PRESIDING MEMBER GEESMAN: I think this
15 was the procedure that the FAA found acceptable at
16 Blythe.

17 MR. WILSON: It's not in --

18 PRESIDING MEMBER GEESMAN: But I think
19 that --

20 MR. WILSON: I understand, but it's not
21 in. Just I would recommend, if you want to move
22 on, I'm just raising a flag. You may as well get
23 it settled now rather than when the power
24 company's trying to start the power plant and he's
25 saying I can't meet this. That's all I'm saying.

1 It's up to your staff to work it out. I
2 could care less on that issue.

3 HEARING OFFICER KRAMER: But are you
4 saying you would prefer that they try to add that
5 to the --

6 MR. WILSON: I would say that you should
7 -- one of your staff members ought to contact the
8 Hayward Airport first; get a comment from the
9 tower. And then -- and/or the FAA in Burlingame
10 may have a comment on that, also.

11 All I'm trying to do -- you got somebody
12 in the box here, so you either got to do one or
13 the other.

14 HEARING OFFICER KRAMER: Well, the
15 verification is really about how to prove that
16 you've --

17 PRESIDING MEMBER GEESMAN: You've done
18 all the --

19 MR. WILSON: Well, you got to install
20 the ASOS.

21 HEARING OFFICER KRAMER: -- you've
22 complied with the bullet. Right.

23 MR. WILSON: It's about an \$85,000
24 system first. How long is that going to take to
25 get approved and installed. Hayward doesn't have

1 one.

2 All I'm saying is you should research it
3 out. I'm not saying it should be or shouldn't be.
4 I'm just saying right now you've got the power
5 company in a box.

6 HEARING OFFICER KRAMER: Well, they do
7 have the option later, if it turns out they can't
8 do it, of coming in with an amendment request.
9 May ask the applicant if they're --

10 MR. RATLIFF: We're talking about the
11 verification here, in any case.

12 HEARING OFFICER KRAMER: Well, but it
13 also relates to the bullet up above.

14 MR. WILSON: Yes.

15 MR. HAAVIK: What's the likelihood of
16 the City of Hayward putting in an ASOS, Bob?

17 HEARING OFFICER KRAMER: Well, I'm
18 sorry, we can't allow dialogues from the dais with
19 the audience.

20 MR. HAAVIK: I'm sorry, but it seems to
21 be --

22 HEARING OFFICER KRAMER: You can ask him
23 in a minute.

24 MR. HAAVIK: -- if there is no ASOS how
25 can you require it?

1 HEARING OFFICER KRAMER: Well, let's
2 first ask --

3 MR. HAAVIK: Or how can you verify it?

4 HEARING OFFICER KRAMER: -- ask the
5 applicant if they have looked into this at all.

6 MR. WHEATLAND: We have not.

7 HEARING OFFICER KRAMER: Was the
8 applicant expecting to fund the ASOS? Its
9 installation and purchase?

10 MR. WHEATLAND: No, we were not.

11 PRESIDING MEMBER GEESMAN: That would
12 seem to be the implication of Trans-10.

13 HEARING OFFICER KRAMER: So, Mr. Wilson,
14 are you saying there is no ASOS at this point?

15 MR. WILSON: There's no ASOS.

16 HEARING OFFICER KRAMER: But there is a
17 recording of some sort that's broadcast, right?

18 MR. WILSON: It's broadcast to pilots,
19 but it's manually input. It's manually -- the
20 idea between an ASOS is to have automatic weather
21 continuously, and the voice comes up --

22 HEARING OFFICER KRAMER: A synthesized
23 voice.

24 MR. WILSON: Right, there you go. But
25 that's one issue. The second issue is will the

1 FAA allow you to make any verbal notice
2 announcements.

3 For example, another example is when
4 you're departing the Hayward Airport what happens
5 is, is that because of the heavies coming in, any
6 time you're taking off from 28-Left and you make
7 the turn, what they're doing is the tower will
8 give you a notice to airmen to be advised of the
9 wing vortices.

10 So remember, they're the trailing off,
11 and it's up to the pilot to either stay-hold, slow
12 down, wait until the aircraft passes, or he does a
13 270 and comes back over to 28-Right.

14 ASSOCIATE MEMBER BYRON: Mr. Wilson, you
15 said earlier that the tower does not operate 24
16 hours a day. Are you on Unicom at that airport
17 when it's not operating?

18 MR. WILSON: Both. Because Unicom, you
19 can do it if you're VFR, if you're IFR then
20 you're --

21 ASSOCIATE MEMBER BYRON: Departure
22 control.

23 MR. WILSON: Right. So you're not
24 notified. So if you have somebody coming in in
25 the off-hour there would be a chance that the

1 pilot wouldn't be notified per the requirement.

2 HEARING OFFICER KRAMER: But there is,
3 what I'm hearing from you is currently there is a
4 different way of providing this information to
5 pilots. It's just not the automated system?

6 MR. WILSON: Correct. Well, that's the
7 ASOS. If you pick up the ATIS you're picking up
8 the Oakland ATIS. Or the Oakland weather, which
9 is a couple miles away.

10 HEARING OFFICER KRAMER: But the Hayward
11 Tower broadcasts --

12 MR. WILSON: They can't broadcast
13 weather because it's not current because nobody's
14 in it.

15 HEARING OFFICER KRAMER: But they do --

16 MR. WILSON: They tell you to contact
17 the Oakland Tower is what they do.

18 HEARING OFFICER KRAMER: Okay, so then I
19 guess there is no current substitute for the ASOS?

20 MR. WILSON: No, there isn't. Well,
21 there would be if you call the Oakland Tower,
22 because you make your announcement through the
23 Oakland Tower. The Oakland Tower operates 24
24 hours a day.

25 ASSOCIATE MEMBER BYRON: However, ATIS

1 also operates 24 hours a day, doesn't it?

2 MR. WILSON: They can't, because --

3 ASSOCIATE MEMBER BYRON: It may not be
4 updated, but I suspect that the last ATIS
5 report --

6 MR. WILSON: The ATIS tells you to
7 contact the Oakland Airport.

8 ASSOCIATE MEMBER BYRON: But what we're
9 discussing is overlay on top of ATIS that would
10 give a NOTAM.

11 MR. WILSON: That's correct.

12 ASSOCIATE MEMBER BYRON: And so if --
13 they could leave the ATIS on when the tower's not
14 operating.

15 MR. WILSON: Again, that has to be
16 discussed with the Hayward Airport, the Oakland
17 Airport and the FAA.

18 ASSOCIATE MEMBER BYRON: Yeah. And I
19 think you'll agree that this probably could be
20 worked out.

21 MR. WILSON: It can be worked out. I'm
22 just saying don't get them in a trap because
23 they'll never get out of it.

24 HEARING OFFICER KRAMER: Would it help
25 to say airport surface observing system or

1 equivalent equipment?

2 MR. WILSON: No, I think you should just
3 leave it at that now. Hand it off to your staff.
4 Let them do a quick investigation. I think it
5 could be resolved in a few hours.

6 HEARING OFFICER KRAMER: Commissioner
7 Byron, could you, for the court reporter, give him
8 the acronym of ATIS?

9 ASSOCIATE MEMBER BYRON: I don't recall
10 what ATIS stands for. It's a --

11 MR. WILSON: Automatic --

12 HEARING OFFICER KRAMER: No, what are
13 the letters? That was A-T-I-S?

14 MR. WILSON: A -- A-T-I-S.

15 HEARING OFFICER KRAMER: ATIS?

16 MR. WILSON: Yes, ATIS.

17 PRESIDING MEMBER GEESMAN: Ms. Ford has
18 a comment.

19 MS. FORD: Automatic Terminal
20 Information Service.

21 HEARING OFFICER KRAMER: Okay, Ms. Ford,
22 for the record, said Automatic Terminal
23 Information Service. Just wanted to help out the
24 court reporter with the acronyms.

25 MR. WILSON: And for the benefit of

1 Commissioner Geesman, it's an Egyptian thing.

2 HEARING OFFICER KRAMER: Anything else?

3 MR. WILSON: Yes. Dealing with airports
4 and hazardous material. Currently any hazmat
5 incident, whether it be on a freeway, whether it
6 be in a plant, typically you bring in -- or the
7 fire department is the first to respond. Then if
8 there's a hazmat team like we have in this area,
9 that's out of Castro Valley. Then they respond.

10 So it doesn't matter where it's at.

11 What happens is, depending on the
12 chemical or gas that's released, what happens is
13 that typically the first people on site use an air
14 pack to go in to evaluate, or they talk to the
15 people that were involved in the hazmat release.
16 They try to secure the area and move on from
17 there.

18 What they do is they take it by verbal
19 as to what happened and what the release is. Then
20 in some instances, if not all, the hazmat team has
21 measurement devices to make sure the air is clear
22 and breathable, so they can walk into that area.
23 They can take their gas packs off.

24 My concern is that there is no law,
25 there is no mention, no one has to do this, to

1 take an air measurement above whatever the person
2 is measuring in. So if the person is six foot
3 tall and he has a hand-held instrument, this is as
4 high as the measurement is.

5 My concern -- and this is a public
6 comment, I don't expect an answer -- both power
7 plants, that would be Russell and Eastshore, have
8 fan banks as their cooling towers. Any hazardous
9 hazmat release could be absorbed or pulled over
10 into the fan bank and then up into the air.

11 So, I just want you to be aware that if
12 there is a hazmat release and people have a
13 tendency to hover in the area, for example
14 helicopter pilots, what would you do in the case
15 of a hazmat release.

16 The way the law and procedure is is to
17 set up the hazmat and work out the hazmat issues
18 90 days prior to bringing hazmat material onsite.
19 So therefore, you really don't discuss it within
20 the CEC workshop. When I did bring it up, that's
21 a problem of the fire department and the power
22 plant when and if they get around to it 90 days
23 prior to bringing it on.

24 So, I just want to point out that Contra
25 Costa County is currently investigating if they

1 have an incident at an oil refinery or the power
2 plant, what and how, or who they should contact to
3 close off the airspace. Not permanently, but just
4 tell people to avoid it. The problem with Hayward
5 is we have helicopters and hovering.

6 One of the other areas -- so that ends
7 that comment. Just be aware there is no law,
8 nothing covers it. And if we go back to the
9 evidentiary hearing, who flies over power plants
10 at low altitudes. Well, typically very few
11 people. So I just want you to be aware that there
12 is one county in the process, looking at hazmat
13 releases that could be drawn up in the air. You
14 run a higher risk with a power plant with all the
15 fans.

16 PRESIDING MEMBER GEESMAN: Do you have a
17 sense from Contra Costa as to what altitudes
18 they're concerned with?

19 MR. WILSON: No, not yet. It's very
20 preliminary. And the only thing that I would
21 request is the City of Hayward be aware of that.
22 And that the City of Hayward Fire Department may
23 contact the Contra Costa hazmat people that are in
24 charge of that. And I can give a name through the
25 intervenor.

1 ASSOCIATE MEMBER BYRON: Mr. Wilson,
2 what hazardous material are we speculating would
3 be released from the power plant?

4 MR. WILSON: One would be the anhydrous
5 ammonia. And --

6 MR. RATLIFF: There is no anhydrous
7 ammonia; it's aqueous --

8 MR. WILSON: Aqueous ammonia -- excuse
9 me, aqueous ammonia. And what they've done is
10 they've addressed the aqueous ammonia in the
11 Eastshore Power Plant hazmat saying that at the
12 interval at 30 minutes -- but would result in
13 strong odor, lachrymation and irritation of the
14 upper respiratory tract, nose and throat. But no
15 incapacitation or prevention of self-rescue.

16 The issue is not that a pilot would
17 faint or anything of that nature. The issue is if
18 you're on an IFR approach or you're continuously
19 doing IFR approaches, you should notify the
20 airport to avoid that area.

21 I want to give an example at Blythe what
22 happened. There was a release, and we'll be
23 including that. And what happened was they
24 actually closed the freeway down for Blythe. But
25 they never notified the airport.

1 So, the problem is how can you close an
2 entire freeway in both directions and not even
3 call the Blythe Airport.

4 Now, the risks at Blythe and the number
5 of flights at Blythe, very very few. But if you
6 have a sunny afternoon, you've got the pattern
7 full, you've got people practicing approaches,
8 you've got the regular traffic coming in and out,
9 you got jet traffic, and what happens is -- or if
10 you have the blimps come in and/or helicopters
11 doing practice hovering, those kinds of things,
12 you could possibly end up where someone starts
13 rubbing their eye. And they don't know why.

14 So I don't need a comment. This is what
15 happened at Blythe. It's documented. It's
16 documented that they closed off the area. Also
17 with the power plant in Pittsburg; they had a
18 shelter in place. Same thing. But there was no
19 notification. We have that report.

20 So, how can you tell people to remain in
21 their houses and homes or businesses or schools,
22 but then not even call the airport? So if you're
23 going to do that you're going to have to notify
24 the Oakland Airport and you're going to have to
25 notify the Hayward Airport.

1 HEARING OFFICER KRAMER: Well, I thank
2 you for the comment. And I'm sure staff will take
3 that into consideration, condition Haz-2 requires
4 a risk management plan that would be reviewed by
5 the City Fire Department and the compliance
6 project manager. And it looks like also USEPA.
7 So, I assume they will --

8 MR. WILSON: But again that's 90 days
9 before, so it's -- all I'm doing is bringing it to
10 your attention.

11 HEARING OFFICER KRAMER: Right, and we
12 appreciate that. But it's a level of detail that
13 we wouldn't normally put in a decision.

14 MR. WILSON: That's correct. I'm just,
15 for public record.

16 HEARING OFFICER KRAMER: Is that it?

17 MR. WILSON: I'd like to address the
18 fireplace retrofit program. The fireplace
19 retrofit program on the particulate matter is an
20 accounting function tracking air quality within
21 the Bay Area.

22 So it's for the benefit of the Bay Area
23 Air Quality Management, reporting on Title 4 and
24 5, to the EPA in Washington.

25 What we have here is we have an island,

1 that island being Hayward. And one or two power
2 plants, if they're installed. So let's talk about
3 Russell. And we have a certain number of credits
4 that they're looking to negotiate for each
5 fireplace and what each fireplace monetary
6 contribution would be to the homeowner.

7 And based on what we looked at was
8 discussed in the workshops. If you calculate out
9 the total contribution by the power plant, power
10 company, the owner, is about 1.7 million.

11 However, if you use the calculations of
12 what it costs to retrofit a fireplace, it comes
13 out to about \$2500 by the time you run the gaspipe
14 underneath the house, you have an inspection. If
15 you've got an igniter you've got to run the
16 electrical to a transformer. Those kinds of
17 things. Put the liner in.

18 And if you calculate out based on the
19 worksheet that's required, for Russell alone you
20 end up about \$10 million. So that would be
21 fireplaces and/or stoves.

22 The point is we already know that, so
23 who cares about Hayward from the Bay Area Air
24 Quality standpoint, because all they care about is
25 the entire Bay Area for the report: Are they in

1 compliance?

2 There are different air monitors
3 throughout the Bay Area. And I believe what the
4 Commission is trying to do is try to stay close,
5 on this fireplace retrofit program, to the source
6 of the particulate matter, or the PM10.

7 The problem is can the people -- my
8 question, or the rhetorical question is why does a
9 homeowner have to buy into this. If you took all
10 the required houses to convert them, that comes
11 out to be about 10 million. Subtract out what the
12 1.7 million, and you got about a million that the
13 people within Hayward have to come up with money.

14 Now, before Commissioner Geesman says
15 it's volunteer, I agree, volunteer. But my
16 family's grown. I'm a little bit older. I'd like
17 to see the air remain clean. So the question at
18 issue is how would I do that. How would the
19 people of Hayward buy into this?

20 You're trying to say anybody, the Bay
21 Area Air Quality Management District. If you
22 replace a fireplace in San Francisco that could
23 actually make a contribution to the entire Bay
24 Area Air Quality Management District. But you're
25 trying to keep it in Hayward, and I would prefer

1 to keep it in Hayward. I would prefer that either
2 the financial partners, that would be either
3 Calpine or GE, pay for the whole thing. They
4 should foot the bill for the whole thing.

5 Now, if you come up with a certain
6 number of fireplaces, and according to the
7 worksheet, 4000 fireplaces, that's 4000 homes, is
8 the City of Hayward prepared to inspect 4000 homes
9 in a 12-month period of time?

10 What is the inspection fee? If the
11 inspector walks into a house and the house doesn't
12 have a smoke detector, is that another requirement
13 that is added on and put as a burden to the
14 resident? If you have an elderly person that
15 doesn't understand between a fireplace plug and a
16 fireplace gas insert, and they elect the plug, and
17 a son or daughter comes along and says, what did
18 you do that for. Well, it's too late.

19 So, it wasn't quite clear. And I
20 believe the intervenor, Paul Haavik, started on
21 the track to say well, how would you notify the
22 people. And then how would you clarify it. How
23 would you sign up for it. I mean that could take
24 three months just to put the entire program
25 together.

1 So already Hayward, because we're the
2 first, ends up, just as a number, three months
3 behind. So we don't get the full 12 months to buy
4 into the program. So it's like we're three months
5 down the road when the program's already going.
6 And then what we're doing is we have to try to buy
7 in in the remaining months before it goes
8 someplace else.

9 HEARING OFFICER KRAMER: I think you
10 have a couple misconceptions.

11 MR. WILSON: Okay, go ahead.

12 HEARING OFFICER KRAMER: The full
13 program extends over 24 months. You're right that
14 it's exclusive to Hayward for 12 months. But in
15 the second year Hayward can still participate.
16 It's --

17 MR. WILSON: I understand, I understand
18 that.

19 HEARING OFFICER KRAMER: And San
20 Francisco was never involved, you know, it never
21 goes that far.

22 (Laughter.)

23 MR. WILSON: Just checking.

24 HEARING OFFICER KRAMER: Used them as --
25 okay.

1 MR. WILSON: So, who pays? My question
2 is a rhetorical question that the Calpine
3 Corporation is in bankruptcy. Is the problem now
4 they can't pay? What about GE? GE's the biggest
5 corporation in the United States. Could they pay?

6 Also why limit it to the exact number of
7 fireplaces? Why couldn't we get 10 percent more?
8 And why couldn't they pay for the full amount?

9 I think what's happening is I hear we
10 will do this, but if it doesn't work, they will
11 have to pay, so don't worry about it. The problem
12 is the dirt remains in Hayward. And what I would
13 like to see is Hayward given every opportunity
14 that they could participate, the young, the old,
15 the new families buying houses, the elderly.

16 And you're talking typically older
17 homes, because the newer homes that are built
18 today, they can't put the wood fireplaces in, wood
19 stoves in; they've got to have a gas insert. So
20 you're talking about the older homes, the older
21 people, or the younger people who have just
22 purchased a home. Is there a way that there could
23 be a bigger contribution?

24 My last comment. If there isn't, and
25 Hayward -- that's where the plume remains -- so

1 from an accounting standpoint you can move off to
2 city to city, not San Francisco, and the issue is
3 is that we come back to the environmental justice
4 for Hayward.

5 If it's not paid, and the power plant
6 goes off and does something else accounting-wise,
7 the PM10 still remains here. So, again, if that's
8 the way it is, you've got an environmental justice
9 problem. So accounting-wise it works out for the
10 owner. But from a standpoint of the residents of
11 Hayward, we're stuck with it.

12 So, what I would recommend is that I
13 would prefer they not purchase credits from other
14 areas. I would prefer that they pay for the full
15 amount plus, say, 10 percent; and then that would
16 be a good deal.

17 And it would be up to the residents to
18 convince their neighbors to participate in the
19 program. And it would be up to the City of
20 Hayward, the schools, et cetera, to say this
21 benefits everyone.

22 HEARING OFFICER KRAMER: Thank you.

23 MR. WILSON: Thank you.

24 HEARING OFFICER KRAMER: Next is Suzanne
25 Barba.

1 MS. BARBA: You have the card, Suzanne
2 Barba, with a z, the Suzanne part. B-a-r-b-a.

3 I guess I'm a Johnny-ette come lately.
4 This is the first meeting I've attended. But I
5 did wade through on your website all the different
6 reports. And the Eastshore one was 638 pages, and
7 I didn't have the toner to download it.

8 But anyway, I'm not in aviation, I'm not
9 an engineer, I'm not a lawyer, or insurance
10 person, I'm not any of those experts. My
11 expertise is in breathing. And so I wanted to
12 talk about the air quality. And Mr. Wilson talked
13 a little bit about it, as well.

14 It seems like -- we just had several
15 spare-the-air days, just recently. And they said,
16 please don't drive, and don't run your large
17 equipment, and don't do this and don't mow your
18 lawn and put more pollutants into the air.

19 And what are we talking about with the
20 Russell City project? We're talking about, I
21 think you said 40 million -- no, 40,000 -- what
22 did you say -- tons of --

23 MR. SPEAKER: Forty-three tons.

24 MS. BARBA: -- 43 tons, thank you, 43
25 tons of pollutants into the air. This is during a

1 time when we're all concerned about global warming
2 and not throwing any more stuff into the air. And
3 that's what this project is going to do.

4 I understand they have to go somewhere.
5 And I understand you probably run into "not in my
6 backyard" everyplace you try to site a plant.

7 However, in reading about this one, it
8 is close to two hospitals, it is close to many
9 elementary schools, it is close -- there's Chabot
10 Community College not that far, CalState East Bay
11 not that far. And I live in an unincorporated
12 area that borders Hayward. But I travel into
13 Hayward a lot.

14 And it just seems to me that to mitigate
15 those 40 tons of pollutants that are going into
16 the air it's unrealistic. It doesn't make sense
17 that your mitigating it by using a fireplace
18 project. No one ever talks about the fact that --
19 because I have a heating system that runs on
20 natural gas, although I don't use my -- ever use
21 my fireplace. But I do get -- and my gas bill is
22 ten times as much as my electric bill.

23 So, after the people who are good enough
24 to convert their fireplaces to natural gas, then
25 they're going to be paying higher bills from there

1 on out unless they cap it and don't use it at all.

2 And when they do use it, it would be in
3 the wintertime. And that is a time when, well, we
4 don't have the spare-the-air days, but it's uneven
5 kind of thing. And they only use it for a portion
6 of the year, but they're going to be getting the
7 pollutants all the rest of the time during the
8 rest of the year.

9 So I don't see how it really mitigates
10 it very very much by having the fireplace. It
11 seems like you could come up, like your brilliant
12 engineers could come up with a better mitigation
13 for reducing the amount of pollutants that are
14 going to be thrown into the air.

15 In reading the report I think it was the
16 Bay Area Air Quality Management District says in
17 one of their findings, there will be no
18 significant, and then they have a footnote that
19 said significant means adverse -- there will be no
20 significant impacts caused by this thing to the
21 air quality. And then they blah, blah, blah for
22 another couple of sentences. And then the last
23 sentence of that same paragraph says: Because of
24 the significant impacts there's going to be
25 mitigation.

1 I mean that doesn't make any sense at
2 all. They first say there's no significant
3 impacts; and then they say they need mitigation to
4 take care of the significant impact. It seems
5 like a contradiction in terms.

6 Seems like to me, who again is not an
7 engineer or a chemist or any of those, if you were
8 offering a subsidy program to put solar on top of
9 all these houses instead of worrying about their
10 fireplaces, they would be selling the energy to
11 PG&E. And maybe PG&E wouldn't like that because
12 people's bills, electric bills would be lower.
13 They could sell the energy back to PG&E. It's
14 perfectly clean.

15 We're blessed in Hayward and Castro
16 Valley with really more sunshine certainly than
17 San Francisco has. And all our pollutants, not
18 only, you know, there's no wall that separates
19 Hayward from all the rest of the areas. In fact,
20 I read that a lot of our pollution in the Bay
21 Area, the whole Bay Area, ends up in San Joaquin.
22 They have horrible, horrible smog.

23 There was another study that said that
24 in the Vallejo area, because those people live
25 near refineries, that they have a higher

1 incidences of asthma. They have a higher
2 incidence of upper respiratory diseases and things
3 like that.

4 So, if we're going to be putting 40 tons
5 of pollutants into the air, it just seems like
6 here's the 40 tons of pollutants.

7 Oh, yeah, one more, about the cap-and-
8 trade, which I think is just a shell game. From
9 what I read in the newspaper, they can take credit
10 for a company that used to pollute but is out of
11 business now. So they take those credits.

12 So it's not really reducing the amount
13 of pollutants. They're just going to spew it up
14 there anyway, but they're going to take credit for
15 someplace that doesn't do it, that either are out
16 of business, or is doing a good job in reducing
17 their pollutants. So you're still putting it up
18 in the air.

19 The Russell City people should have to
20 find better mitigation, better technology for
21 reducing the amount of pollutants they throw in
22 the air. We're all very concerned about global
23 warming. And for this particular plant -- and
24 then I've been reading it about the Eastshore,
25 too. And again, both Eastshore and Russell are

1 taking credit for the mitigation of having the
2 fireplaces. How is that going to work?

3 I mean they can't both take credit for
4 the number of fireplaces in Hayward that are done
5 away with. So I haven't seen how that is actually
6 going to be worked out.

7 But, I thank you again for giving me the
8 opportunity to speak. And, good night. Thank
9 you.

10 HEARING OFFICER KRAMER: Thank you.
11 John Gilbertson. Oh, I'm sorry, Mayor Sweeney,
12 did you want to -- okay.

13 MR. GILBERTSON: I'm John Gilbertson and
14 I live at 22907 Nevada Road, Hayward. I've been a
15 resident of Hayward since November 1951.

16 I would like you to know that the air
17 quality in Hayward has diminished tremendously
18 over the years that I've lived here. It's a shame
19 that that has been allowed.

20 I have this article here; it's hard for
21 people to read, so that I will do it orally. It's
22 from the California Retired Teachers Association
23 Contact publication, February 2002. It's adapted
24 from the Atlantic Constitution, titled, A Breath
25 of Foul Air:

1 "Health experts have known for a long
2 time that pollution isn't good for the heart. Now
3 recent research has found that breathing in even
4 acceptable levels of pollutants can trigger a
5 heart attack. A study by the American Heart
6 Association found that the risk of heart attacks
7 increase even at low concentrations of tiny air
8 pollutants from such sources as power plant
9 emissions and car exhaust."

10 Notice what's listed first, power plant
11 emissions.

12 "The U.S. Environmental Protection
13 Agency deems that air is safe when concentrations
14 of pollutants fall below 65 mcg of particulate
15 matter per cubic meter of air in a 24-hour period.
16 But the study conducted in Boston showed that
17 people increase their risk of heart attacks even
18 when they're exposed to pollution at
19 concentrations below the EPA standards."

20 Hayward residents don't need a heavily
21 polluting power plant in this location. Already
22 we have excessive pollutants from the Hayward
23 industrial section, the Hayward Airport, car and
24 truck traffic on highway 92 and 880; and excessive
25 car and truck traffic on the following city

1 streets in the area: Hesperian Boulevard, Whitton
2 Avenue, West Jackson Street, West A Street,
3 Clawiter Road, West Jackson Street, et cetera.

4 I was a World War II U.S. Naval pilot.
5 I had no hesitation to lay my life on the line for
6 this democratic republic. But when matters such
7 as this be put on the table and more support is
8 given to this than the needs of the public, I
9 become very very cynical and disturbed.

10 By public I mean the children,
11 teenagers, young adults, older adults and senior
12 citizens. I have a problem with my sinuses. I
13 wonder if it's from the pollutants in my area. I
14 live a quarter of a mile from the Hayward Airport.
15 Just a mile and a half from the Bay. Where are
16 all these pollutants coming from?

17 The energy power plant, the power,
18 where's it going to go? Across the Bay. That's
19 what I seem to remember reading and hearing about
20 before. Why the need here? Folks, you have a
21 responsibility. Are you going to look at the
22 human-ness of this, or are you going to look at
23 the money-ness of this.

24 Thank you for your time.

25 HEARING OFFICER KRAMER: Thank you.

1 Mayor Sweeney.

2 MAYOR SWEENEY: I'm Mike Sweeney,
3 S-w-e-e-n-e-y. And I have the special privilege
4 of serving the citizens of Hayward as their
5 Mayor. I just wanted to make a couple of
6 comments, and I had a question.

7 First of all, I think Mr. Haavik's
8 comments about not simply making the so-called
9 mitigations for the airport issues, requests to
10 the APA, I think are well taken. If mitigation is
11 to mean anything, if we're to simply pass the
12 mitigation responsibility off to somebody else and
13 say, you know what, if they shrug their shoulders,
14 it's okay; if they don't follow through is clearly
15 inadequate.

16 You have the leverage. You have the
17 unique point in time here to require that the FAA
18 follow through. And if you let them off the hook
19 then chances are they won't follow through. And
20 that, of course, assumes that the mitigations that
21 are mentioned here involving the FAA and the
22 Hayward Airport are adequate. I think Mr.
23 Wilson's comments about the ASOS are also well
24 taken.

25 Secondly, there's a lot of talk in the

1 report about compliance reports. And it's unclear
2 from the decision whether or not and how the
3 public and the City is notified if there are
4 problems with compliance. And I think that needs
5 to be clarified.

6 Certainly the public and the City has a
7 right. The City, no doubt, if there's a real
8 problem at this power plant, will be expected to
9 be the first responders, the first folks on scene.
10 But it is not clear from the decision here how the
11 City is brought into the loop if, in fact, there
12 is a problem with compliance.

13 On page, I believe it's 28, reporting of
14 complaints, notices and citations, it talks about
15 notifying residents within one mile of the project
16 of a telephone number and a contact if there are
17 concerns. I think one mile is totally inadequate.
18 At a minimum the City of Hayward and all the
19 residents within the city limits should have that
20 information.

21 And there should be a requirement that a
22 real live responsible body answer the telephone if
23 there is a problem. What is stated here is that
24 if the telephone is not staffed, some sort of
25 answering machine will be there. This isn't a

1 problem with the cable tv channel, right, where
2 you can't get somebody to respond. This is a
3 concern about a power plant. And certainly there
4 should be a better way in which citizens should be
5 able to access other responsible parties if, in
6 fact, there is a problem.

7 And finally, a couple comments about air
8 quality. The folks from Russell City seem to
9 indicate that they've made some changes in their
10 proposed mitigations, that more of the trades will
11 happen locally. As a percentage, when you look at
12 the percentage, what percentage is that, given the
13 gross number of pollutants that are going to be
14 released in the area, in terms of those credits.
15 Certainly somebody has a sense. Does that
16 represent 90 percent, 50 percent, 5 percent?

17 MS. McBRIDE: It's about 60 percent.
18 Sixty percent is (inaudible) -- if you want exact
19 numbers, --

20 HEARING OFFICER KRAMER: Could you come
21 up to the mike for the cable audience and also for
22 the transcript?

23 MS. McBRIDE: Hi, I'm Barbara McBride,
24 Calpine. M-c-B-r-i-d-e. The total numbers are we
25 have to supply 154.8 tons of emission reduction

1 credits. Actually it was a ratio on there. It's
2 137.1 tons are going to be in San Leandro, Oakland
3 and Hayward; and 46.2 tons are going to be --
4 they're actually coming from San Francisco. So --
5 and you can keep this if you want. It's actually
6 listed right there. And the distance that the
7 actual credits are from the site.

8 MAYOR SWEENEY: When I testified before
9 you all I think it was last fall at Centennial
10 Hall, you held a tour of the site. And you also
11 held a session at Centennial Hall.

12 One of the comments that I made to you
13 at that point was that the use of these emission
14 credits should be for the net benefit of the
15 citizens of Hayward. And I want to underscore
16 that comment because if they're not for the net
17 benefit of the citizens of Hayward then I think
18 the comments you've heard from a few folks
19 regarding the fundamental fairness of that system,
20 and whether or not you have an environmental
21 justice problem here are, I think, very well
22 taken.

23 If those credits aren't used for the net
24 benefits of the citizens of Hayward that's simply
25 wrong and unequal and unfair.

1 What you're, in essence, saying with
2 this emission credit program is that if you have
3 an area like our area that is already out of
4 compliance, and there will be an additional amount
5 of pollutants emitted into the atmosphere in our
6 area, simply by trading credits using these paper
7 swaps, you bring the area back into the
8 noncompliance that it was in previously is fine,
9 if, in fact, it's to the net benefit of the
10 citizens of Hayward. Because we're the ones who
11 are going to be breathing that air. So I hope you
12 will keep that in mind when you look at the air
13 quality and the environmental justice issues here.

14 Those are my only comments. Thank you.

15 HEARING OFFICER KRAMER: I want thank
16 you, as a representative of the City, for allowing
17 us to conduct our hearings here.

18 MAYOR SWEENEY: You're welcome.

19 HEARING OFFICER KRAMER: it's a very
20 nice facility.

21 Francisco Abrantes.

22 MR. ABRANTES: I am Francisco Abrantes.
23 I live here for 21 -- 31 years. My last name
24 A-b-r-a-n-t-e-s.

25 Myself, not engineer, not a doctor, I

1 just (inaudible) over here. But I grow up in
2 small town. I was for years international truck
3 driver at (inaudible). International truck
4 driver. I have millions of miles driving. I now,
5 I travel four continents. I live over here 31
6 year.

7 I read lots of books about the
8 (inaudible). Five years ago I was the only one
9 talk about the emissions and the lung disease.
10 Five years ago in meeting someplace. And to
11 combine this time, Calpine go up \$60 a share. Now
12 zip, broken somebody said over here.

13 But that's okay. I'm not a doctor. But
14 I reading my books; I have my book my own because
15 when I want to read the book, I buy it; don't go
16 to library. Don't want to lost my time at
17 library.

18 But -- die every year, seven books.
19 Just read the numbers, the books say 150 people
20 every year lung disease. I don't want die lung
21 disease or become 1 million (inaudible) over here,
22 okay.

23 I try long time ago opening eyes to
24 people. This is business, this is business. Is
25 business just want exploit the people.

1 (inaudible) want more business, more (inaudible)
2 and poor people become more poor. When go to
3 hospital, Kaiser (inaudible) rooms with paper
4 outside the room. When go inside, use the mask,
5 please. Why use the mask? Because lung disease.

6 And there Calpine, Russell City want
7 grow up with this number, make after start this
8 Russell City operation. Now there's 150 people
9 die every year because of pollution around over
10 here. May double through the end.

11 Who pay for this? When asthma attack or
12 something like that; you have to call 911; come
13 firemens; comes ambulance. Have to go to
14 hospital; have to pay. Who pay this money?
15 Everybody. Not Calpine. Taxpayers' money. Each
16 time firemens go out, my estimate cost no less
17 than \$20,000. The ambulance got the person, go to
18 the hospital, no cost less than \$1000.

19 And stay four or five days in hospital,
20 (inaudible) bills for pay. Russell City run away,
21 but is money in its pockets. Now we cry because
22 don't give this money for pay the bills is this
23 people. Because this people don't live
24 (inaudible), who live in (inaudible)? No one live
25 in (inaudible). What you do over here? Go to

1 open the poison factory over here or what? Why
2 don't go to Nevada desert or something like that?
3 It's better. The lines for transport to the
4 energy already is all over. Don't need this
5 poison factory over here.

6 I don't want to die of lung disease. I
7 went to doctor a few days ago just for checkup.
8 He said, you in good health. Come next year. But
9 maybe next year when go there, my lungs, oh, you
10 have something in the lungs now. Why? Because --
11 I read some: The emissions sometimes forced to go
12 up after go down. This is a (inaudible) over
13 here. The students, the teachers, the workers are
14 over there; stay 10, 12 hours a day over there.
15 What do these people tomorrow go to the hospital.
16 Oh, you have (inaudible), you have asthma. Why?
17 Because the pollution go over there, start over
18 there.

19 I grew up in a small town in Portugal.
20 Grew up and my father have own business and a
21 small farm over there. But out always, when the
22 rain come, I run to the -- not over here. I run
23 to the (inaudible) come from southwest side when
24 rain, southwest side. Most pollution come down
25 with rain. Go to the land, to the tables, run

1 over here, everything is poison by this pollution.

2 I think it's time to (inaudible) -- in
3 Portugese, but (Portugese phrase). Thank you.

4 HEARING OFFICER KRAMER: Marie Jackson.

5 MS. JACKSON: Hi. My name is Marie
6 Jackson, M-a-r-i-e J-a-c-k-s-o-n. And I have a
7 few questions that I want to ask. And the first
8 one is, do any of you Board Members --
9 Commissioners live in the area where they're going
10 to put the plant?

11 HEARING OFFICER KRAMER: No.

12 MS. JACKSON: I didn't think so. But I
13 do. Do you realize there are three elementary
14 schools, two high schools in that area? And the
15 people are moving out, people with small children
16 are leaving our area because of this, the plant.

17 And I want to know, has the decision
18 been made to build the plant?

19 HEARING OFFICER KRAMER: The answer is
20 no. But it will be considered by the full Energy
21 Commission next Wednesday.

22 MS. JACKSON: Okay. Well, the other
23 question I want to know is how come it's not put
24 on the ballot so the citizens of Hayward can vote
25 on it?

1 HEARING OFFICER KRAMER: That's not the
2 way the law deals with these permits.

3 MS. JACKSON: Well, the law should be so
4 we, as citizens, can vote on what goes in our
5 neighborhood. Our health is at risk. You know,
6 you shouldn't be able to make decisions on our
7 health.

8 And the other thing that I was going to
9 ask was about the particulates of the emissions.
10 But I see on this sheet that they gave us it said
11 the maximum cancer risk would be 1.4 tenths in a
12 million. There shouldn't be any risk of cancer to
13 these young people, the kids that are growing up
14 and come in.

15 Hayward is a wonderful city. I have
16 lived here almost 40 years. I raised my family
17 here. And now my next-door neighbors just moved
18 in here, and now they're planning to move out
19 because of this plant going in here. And I don't
20 blame them; they have two small young children who
21 will be exposed to all this stuff that's going on.
22 And I really don't think it's fair.

23 And what the gentleman said in the red
24 jacket that was up here prior, I agree one-hundred
25 percent of what he said. And it's not about --

1 people don't care about anything nowadays but how
2 much money that they get. And this is what this
3 is all about, is money.

4 Thank you.

5 HEARING OFFICER KRAMER: Thank you. I
6 apologize, I've just never been able to get your
7 name -- pronounce your name correctly. But, Ms.
8 Avorashed. Maybe this time it will sink in.

9 MS. AVORASHED: My name is Wafaa
10 Avorashed, spelled W-a-f-a-a A-v-o-r-a-s-h-e-d.
11 And it's funny, every time somebody gets to my
12 name I always know it's me, it's my turn.

13 (Laughter.)

14 HEARING OFFICER KRAMER: You said s-h?

15 MS. AVORASHED: -- s-h-e-d.

16 HEARING OFFICER KRAMER: That sure looks
17 like a "c", oh, well.

18 PRESIDING MEMBER GEESMAN: That's the
19 same as you spelled it last month.

20 (Laughter.)

21 MS. AVORASHED: Exactly. And today I am
22 representing Healthy San Leandro Collaborative,
23 which is Hayward citizens are members of, and the
24 Environmental Justice Air Quality Coalition.

25 And I want to go back to the first

1 speaker. I did not get any notices, and I asked
2 for notices. I did not get the minutes of what
3 happened the last time we met. And that's
4 concerning. I'm very concerned because of the
5 fact that I don't remember all the exhibits that
6 we testified on and what the resolutions are
7 written in here, how are they responding to some
8 of the comments that we spoke last time.

9 So, it's important while we come and sit
10 here for so many hours to reflect back on what is
11 being said, and how we can work together. This
12 way it's a one-way street, and you need to come
13 back and look at the methods of how we
14 communicate.

15 It's really funny because I just went
16 down to Kettleman City to look at the process of
17 informing people about chemical plants that are
18 being built right in their backyards. And the
19 county environmental group felt that it wasn't
20 their job to inform the public and follow up on
21 some of these things that are being built in that
22 area. I felt like I was in a time warp, like in
23 the early '30s. And where these people are asking
24 that the public pay for the postage in order to
25 get notices on the chemicals that are being

1 planted or built in their areas.

2 We here in the Bay Area are much better.
3 We do communicate, but we need to keep it up. We
4 need to keep people informed of what is going on
5 in their areas.

6 I want to echo some of the things that
7 have already been said. And a lot of it, Ms.
8 Carol Ford and Andy Wilson spoke of. Those are
9 the issues that I was very concerned about. The
10 air space.

11 Again, I want to let you know that my
12 father had a flight school at Oakland Airport for
13 35 years. We had students that were coming from
14 all over the world, and a lot of them don't speak
15 English very well. We train a lot of students in
16 the Bay Area. And I have an issue with the fact
17 that the space is being limited for those people
18 that are learning to fly in the Bay Area.

19 I can go along with the aviation
20 industry and tell you exactly my concerns that
21 both Andy and Ms. Ford spoke about. But those are
22 serious concerns, and I really think that you
23 ought to look at some of those. And the costs
24 that perhaps the City of Hayward will have to
25 incur once this goes into reality. I hope it

1 never comes to reality.

2 We at Environmental Justice Air Quality
3 Coalition are against this building of both power
4 plants. And so I want to make sure that you
5 understand that we have a coalition, it's called
6 the Bay Area Health Collaborative, and we
7 discussed this issue, as well. And we have a
8 report that I referred to the last time we were
9 here. It's called, Still Toxic After All These
10 Years. It gives you specifics on health risks.

11 And where the emissions are moving. They
12 aren't exactly staying in Hayward. It's all over
13 the Bay Area. And we need to be very cognizant of
14 that.

15 When somebody talks about significant
16 impact; significant impact is significant to us as
17 humans that are living in these areas. And when
18 somebody says adverse versus this, versus that,
19 we're just passing the buck over here. And we're
20 not taking accountability as to the health of the
21 people that live in this area.

22 We need to come back to the basics, just
23 like the gentleman, the elderly gentleman that was
24 here that was giving you facts. That, you know,
25 we are committed to making a better community to

1 live in. But if the government levels are passing
2 the buck from one to the other, and not taking
3 accountability, that's a concern for us.

4 And when the FAA, from Washington, D.C.,
5 does not answer the phone and step up to the plate
6 and deal with issues that are of concern to
7 people, that bothers me. We have so many layers
8 of government that don't want to take ownership
9 and say, yes, we are here to protect the community
10 that pays the taxes.

11 It's not the corporations that are going
12 to be affected by this pollution. It is the
13 people that live in this area. it is so important
14 for us to remember that. And it seems like time
15 and time again I see it just kind of slipping
16 through; and the almighty dollar seems to be more
17 attractive to the City Manager than it is for the
18 health of the community.

19 So I want to come back to that. And
20 make you aware that, you know, we're the guardians
21 here to protecting the people, protecting the
22 children. We need to remember that.

23 Recently I attended a lecture on the
24 purchase of credits, cap and trade. You know,
25 Europe adopted that. And they thought it was such

1 a big deal that it was going to minimize the
2 pollution and all that. If you look at the
3 current studies that they have, they have more
4 pollution today than they did when they signed the
5 Kyoto -- Treaty, thank you.

6 And what we've also noticed today is
7 that the so-called cap-and-trade issue is becoming
8 an equity issue. So, if, in fact, they buy this
9 credit and they don't need it because they know
10 they're operating less than what was given to them
11 in the beginning, they're selling it. We need to
12 be very careful with this. It's going to happen
13 here.

14 And I already see it. It's already in
15 the thought process of these corporations. And we
16 need to be very very versed on what happened in
17 Europe so that we, in this country, don't repeat
18 that. People are greedy these days. Corporations
19 are greedy. It's not about the affect of the
20 community. It's not about the affect of the
21 health of the children or the elders. It's about
22 the almighty dollar, and it's shame on us if
23 that's how we are going to do business from now
24 on.

25 We need to come back and say, you know

1 what, you don't live in this community but there
2 are others who do. And you know what, you're
3 going to end up paying for it because you didn't
4 pay attention at the health departments. They're
5 the ones that are getting all the statistics of
6 what's happening to our children with cancer and
7 asthma. Shame on us if we don't remember that.

8 Maybe you can afford to pay it. I'm not
9 talking to you as personal, but the government
10 entities. They need to remember that, you know,
11 we have to be careful because what happens to the
12 little people will end up happening to the people
13 that have those almighty dollars. And nobody buys
14 anything when it's contaminated. We need to go
15 back to that.

16 I'm against this personally because I
17 fought one just like it that was trying to come
18 into San Leandro. A few years ago Alameda Power
19 Plant wanted to build one in San Leandro to
20 support Alameda residents. We got together,
21 Oakland, Alameda and San Leandro got together and
22 we made sure that that doesn't happen.

23 I want to make sure that you take
24 responsibility and make it not happen. It's so
25 important. I'm very concerned that there's so

1 many schools in this area. All day long there are
2 kids, there are people that will be affected by
3 this.

4 We don't need another power plant.
5 There's other ways to bring energy into here. And
6 it doesn't have to be a power plant.

7 That's all I have to say. Thanks.

8 HEARING OFFICER KRAMER: Before you go,
9 you mentioned a couple groups you were with. One
10 was the Healthy, and then I ran out of -- got
11 behind --

12 PRESIDING MEMBER GEESMAN: Bay Area --

13 MS. AVORASHED: I am the Executive
14 Director of Healthy San Leandro Collaborative,
15 which covers east Oakland all the way to Hayward.
16 And I am part of EJAQC, which is Environmental
17 Justice Air Quality Coalition.

18 HEARING OFFICER KRAMER: Okay, that
19 was -- yeah, I got -- the San Leandro one was the
20 one I was missing; thank you.

21 Next is Stephania -- I can't quite read
22 your last name.

23 MS. WIDGER: I'm Stephania Widger,
24 W-i-d-g-e-r, lifetime resident of Hayward and
25 Castro Valley. And I'm also a biologist, so I

1 know some of what I'm talking about here, some of
2 what I've been listening to.

3 Quite honestly I'm stunned. I am
4 shocked that the California Energy Commission,
5 that Calpine would get together and would come in
6 to destroy our neighborhood. None of you live
7 here. I live here.

8 These cap-and-trades are absolutely
9 nuts. What they do, and you all know this, is
10 they take, oh, we're going to buy some clean air
11 from Arizona and their credits, and we're going to
12 apply them to Hayward.

13 HEARING OFFICER KRAMER: No, it doesn't
14 work that way.

15 MS. WIDGER: But we don't get rid of --
16 pardon?

17 HEARING OFFICER KRAMER: No, the credits
18 are all in the --

19 PRESIDING MEMBER GEESMAN: Yeah, we
20 don't --

21 HEARING OFFICER KRAMER: -- Bay Area
22 District. They're not from Arizona.

23 PRESIDING MEMBER GEESMAN: You know that
24 they're not from Arizona.

25 MS. WIDGER: Well, that's what -- what

1 I'm telling you is you know that that's how cap-
2 and-trade works.

3 HEARING OFFICER KRAMER: Well, this --

4 PRESIDING MEMBER GEESMAN: Well, you
5 know this isn't cap-and-trade.

6 MS. WIDGER: Okay, then describe it to
7 me. What is this --

8 PRESIDING MEMBER GEESMAN: You're going
9 to have to read our decision to fully gather, --

10 MS. WIDGER: Okay, then let me continue.

11 PRESIDING MEMBER GEESMAN: -- but the
12 Clean Air Act imposes certain requirements on the
13 local district. The local district is part of a
14 state implementation plan --

15 MS. WIDGER: Right.

16 PRESIDING MEMBER GEESMAN: -- to achieve
17 certain attainment levels. Some pollutants which
18 are considered regional in nature, the local
19 district allows offsets to be gathered from the
20 region. Calpine distributed a sheet that they
21 went over with the Mayor earlier this evening --

22 MS. WIDGER: And what is this region?

23 PRESIDING MEMBER GEESMAN: The region is
24 the entire Bay Area. I don't have the Calpine
25 sheet in front of me. Is Ms. McBride still in the

1 audience?

2 MR. WHEATLAND: She just stepped out.

3 We can bring her back.

4 MR. SPEAKER: She'll be back in just a
5 second.

6 PRESIDING MEMBER GEESMAN: We'll have
7 her come back and tell you the location --

8 MS. WIDGER: Okay, I would like that.

9 PRESIDING MEMBER GEESMAN: -- of the
10 offsets. The overwhelming majority of them were
11 characterized as local. Again, I don't have the
12 sheet in front of me so I can't tell you --

13 MS. WIDGER: Um-hum, well, clearly --

14 PRESIDING MEMBER GEESMAN: -- the
15 distance from Hayward --

16 MS. WIDGER: -- I don't, either. I've
17 come into this late. I hadn't even heard about
18 this. I've been busy, you know, dealing with our
19 President and dealing with a little bit higher
20 politics than the Hayward area.

21 But at any rate, whether I have the idea
22 of cap-and-trade incorrect is irrelevant. The
23 air --

24 PRESIDING MEMBER GEESMAN: Here's Ms.
25 McBride, if --

1 MS. WIDGER: Okay.

2 PRESIDING MEMBER GEESMAN: Ms. McBride,
3 if you'd come up to the microphone and go over the
4 material that you shared with the Mayor when he
5 was at the microphone.

6 MS. McBRIDE: About the local offsets?

7 MS. WIDGER: Yes.

8 PRESIDING MEMBER GEESMAN: Yes.

9 MS. McBRIDE: Yeah, I figured it out,
10 actually did the calculation. It's about 75
11 percent of the offsets are local.

12 PRESIDING MEMBER GEESMAN: What's local
13 mean?

14 MS. McBRIDE: They're in San Leandro,
15 Oakland or Hayward. The Hayward, I put the
16 distance on here, what the distance is from the
17 actual site. And Hayward I -- I mean they're
18 pretty darn close to the site.

19 MS. WIDGER: And where's the 25 percent
20 that's not local?

21 MS. McBRIDE: In San Francisco.

22 MS. WIDGER: Aha!

23 MS. McBRIDE: Yeah.

24 MS. WIDGER: So our clean air is going
25 to go to San Francisco.

1 MS. McBRIDE: Well, but remember we also
2 have an offset ratio there. We have to offset 15
3 percent more than what we actually emit. So
4 it's --

5 MS. WIDGER: Does this have to do with
6 are we going to be offsetting formaldehyde? Are
7 we going to be offsetting hexane naphthalene?

8 MS. McBRIDE: No.

9 MS. WIDGER: Xylene toluene? Okay,
10 thank you.

11 MS. McBRIDE: No, those are not criteria
12 pollutants.

13 MS. WIDGER: Okay. I think --

14 MS. McBRIDE: Do you want a copy of
15 this?

16 MS. WIDGER: Yes, thank you. They're
17 criteria for me. I'm an asthmatic, as we all know
18 what this means. And I don't want to live the
19 rest of my life with exactly these benzene,
20 butadyene. I'm sure you've seen this. I haven't
21 heard Calpine even talk about it. They keep
22 talking about 140 tons or whatever figure they
23 have.

24 But it's way more than that. I don't
25 know where that 140 tons idea comes from. Russell

1 City Energy alone has 5, 6, 7, 800 metric tons per
2 year that will be coming out as pollutants. And
3 so I don't know where those figures come from.
4 I'd like to see them.

5 I'd also like to know, I have been
6 hearing in the news about Calpine's giving Hayward
7 \$25 million donation after this deal is through.
8 Now, this was in The Daily Review; this is not,
9 you know, out of some whacko website. So I'd like
10 to hear a little bit about that from Calpine's or
11 from you. I don't know if you're aware of that.

12 I am also interested how a company that
13 is bankrupt can buy that much land. I certainly
14 couldn't.

15 So, thank you. Those are the kinds
16 of -- those are the things I'd like to hear more
17 about. And I also want to put myself down
18 absolutely against both of them.

19 And as someone who was born at Eden
20 Hospital, raised in the Hayward School Districts,
21 I want to see my kids have the same air quality I
22 had as a child.

23 PRESIDING MEMBER GEESMAN: You --

24 MS. WIDGER: I was raised here.

25 PRESIDING MEMBER GEESMAN: And you

1 really would like to go back to those air quality
2 levels?

3 MS. WIDGER: The air quality levels when
4 I was born were much better. My asthma
5 (inaudible).

6 PRESIDING MEMBER GEESMAN: You know, I
7 think the statistics gathered by the Bay Area Air
8 Quality Management District are pretty
9 overwhelming in terms of the progressive --

10 MS. WIDGER: But it's the type of
11 pollutants. We're talking cancer-causing
12 pollutants now that were not around. As a -- I
13 work at Novartis Laboratories. And so we see
14 quite a bit come through.

15 When -- I'm talking about cancer
16 causers; I'm talking about chemicals that weren't
17 even around when I was born. And that's what
18 Calpine's and these kind of energy plants emit.

19 I don't understand why we're not looking
20 at -- I mean it says City of Hayward, heart of the
21 Bay. Do we want to pollute our heart? I mean the
22 heart's basically going to have a heart attack.
23 And it makes me very sad because we could be
24 putting solar roofs up. We don't need an energy
25 plant. We certainly don't need a peaker energy

1 plant.

2 So please consider that before you say
3 yes to this, because you'll really be making a
4 decision that will not be able to be turned
5 around.

6 PRESIDING MEMBER GEESMAN: Thank you
7 very much.

8 HEARING OFFICER KRAMER: Next is Ernest
9 Pacheco.

10 MR. PACHECO: Good evening; my name is
11 Pacheco, that's Pacheco, P-a-c-h-e-c-o. And I
12 have a couple scatter-shot questions and comments
13 to the Commission Members.

14 I guess my first comment would be that I
15 hope they take into consideration that the actual
16 amount of people here, the turnout is, in large
17 part, a result of most people that I've spoken to,
18 and I've spoken to a dozen in the past five days,
19 had thought that your staff's assessment for not
20 pushing Russell City ahead was the final say on
21 the matter.

22 I, myself, was ignorant enough to
23 believe that kind of settled the matter. When you
24 decided last week that you were going against your
25 staff's assessment, very few people knew about it.

1 I happened to be on an emailing list that notified
2 me about that. I've been scrambling ever since.

3 Everyone I've talked to who has found
4 out about this was aghast and thought it was a
5 dead project. So, the size of this crowd here
6 really isn't indicative of the opposition in the
7 community against it, of which there is a lot.
8 It's overwhelming. That's one thing.

9 I spent most of today and half of
10 yesterday at the two Kaiser Clinics, one in
11 Hayward, one directly across the city line in
12 Union City, talking to the pediatric ward,
13 pulmonary ward, the asthma doctors. And I was
14 talking to nurses, staff administrators, doctors.
15 None of them knew any of the details about these
16 plants.

17 One or two of them, and I probably
18 talked to 12 people in depth over the past two
19 days, one or two of them had heard some vague
20 reports of, oh, yeah, I heard they were bringing
21 in some power plants in the community.

22 None of them knew about the 134 tons of
23 engineered nitrogen oxides that are going to be
24 emitted into the atmosphere if this plant runs
25 exactly with complete efficiency, as designed.

1 None of them had heard about the 86.4 tons of
2 particulate matter if there are no accidents,
3 emissions or inefficiencies in this plant.

4 None of them heard about the 12 tons of
5 sulfur dioxides which will be spewing into the
6 atmosphere. Speaking to the asthma doctors they
7 were appalled. Asthma is -- or pulmonary
8 diseases, certain types of pulmonary diseases are
9 actually the fourth leading cause of death in
10 America right now and on the rise.

11 In 1987 it was 7 million were the actual
12 documented cases of adult asthma. It's now up to
13 22 million. Now a large part of that has to do
14 with cigarette, but most of it is environmental
15 factors, or a large part is environmental factors.

16 And they were all aghast at what is
17 being proposed to put into this already foul air
18 that we have in the Bay Area. Yes, it might be
19 better than some of the levels we had before, but
20 it's still terrible.

21 And there are other alternatives. It's
22 not like this plant must be done. All this is
23 about is whether or not Calpine, a bankrupt
24 company that couldn't handle its business, can
25 come in here, and using the system which is in

1 place, go ahead and sell their product. There
2 are alternatives.

3 The last time that I saw you guys, you
4 probably don't remember me, but I remember you,
5 was when I found out by just happened to pick up a
6 newspaper. It was the meeting before last that
7 you held here. And it was on the Russell -- I'm
8 sorry, it was on the Eastshore plant, the peaker
9 plants.

10 And when I read in the paper some of the
11 stuff that was going to be put out by the
12 Eastshore plant, the acrolein, ammonia, benzene,
13 et cetera, et cetera, and the huge amounts of
14 tons, the ammonia slips, which really matter to
15 me, I felt compelled to come down here.

16 And I listened, and I've been on a steep
17 learning curve of finding out both about Russell
18 City and Eastshore ever since. At the end of that
19 meeting I got up and I asked a question, because I
20 was very behind the curve. And already in my mind
21 was forming something that might be pertinent.

22 Well, I know it's pertinent. And I
23 asked the Commission, I was really concerned about
24 the overrides you've done here in the Bay Area in
25 the recent past. You informed me that you had

1 done three, against the wishes of the community.

2 The entire community and the City
3 government is against the peaker plants. We're
4 not talking about that tonight, but this is --
5 it's all tied in together here, at least for me.

6 And you informed us that even with
7 community and government city opposition you still
8 have the right, under necessity and convenience,
9 if you feel it's appropriate, to override and
10 place the plants.

11 Well, in this particular situation the
12 City seems to be for it. The City Council and the
13 previous mayor office, perhaps understandably
14 during the tail end of the manufactured, fake
15 energy crisis of the past -- well, it was an
16 energy crisis, for brownouts, rolling blackouts,
17 it was an energy crisis. It was a manipulated,
18 manufactured energy crisis.

19 I mean at that time they were approached
20 by Calpine before their economic house of cards
21 came crashing down into bankruptcy, which they're
22 trying to us to scale themselves completely out
23 of, approached the City. And with some nice
24 incentives towards the public library, which I
25 love my public library, we all do, and promises of

1 this and that, got permission from that council.

2 And I understand. I'm not casting
3 stones. I understand at the time why they might
4 have thought it was an option. The situation, I
5 believe, has changed.

6 Now, as to moving forward, I've spent a
7 lot of time since that meeting -- and in that
8 meeting, I'm sorry, I lost track for one second, I
9 asked, I believe it was Commissioner Geesman, had
10 any of these communities that you overrode the
11 wishes of the city governments and the
12 neighborhoods, had any of them presented to you
13 any plan for energy efficiency and clean energy
14 production.

15 And you told me at that time, no, they
16 hadn't. I asked you would you take into serious
17 consideration on an override, when making a
18 decision about an override, you leaned forward,
19 looked me in the eye, took a moment and said, yes,
20 we would.

21 Now, granted that's the peaker plant in
22 particular; the override is a possibility at this
23 moment on Eastshore.

24 I spent two months since then reaching
25 out into our community and all over the State of

1 California, actually, to find out what are the
2 alternatives and what can we do here in Hayward.

3 I've made contacts with the County of
4 Marin, which has an amazing program going with
5 solar. I've made contact with San Francisco,
6 which the CCA, the Community Choice Aggregate
7 they're doing, is amazing. It's a template for
8 sustainable civilization in large part, in direct
9 opposition of what Calpine wants to do here. In
10 direct opposition of what the CPUC and the CEC
11 together in the state energy plan, every paragraph
12 repeat over and over, environmental mitigation.
13 Lowering of global warming gases; lowering of our
14 carbon footprint.

15 You can't read two sentences in the
16 CPUC/CEC literature about the plan for California
17 without stumbling over addressing this global
18 warming crisis and the environmental degradation.
19 Which you guys, by overturning your staff's
20 assessment, you are in direct contradiction with
21 what you state.

22 And whether those words just littered in
23 your plan for whatever reason, I hold them to have
24 meaning. They're necessary. Do not let this
25 plant go forward.

1 Currently I and many other members in
2 the community have activated; we've reached out
3 and found an incredible amount of knowledge in our
4 community. Everyone has been working disparately
5 on clean energy and energy efficiencies,
6 megawatts. No one was talking to each other.

7 As usual it takes a disaster before
8 everyone gets together. We just began this.
9 We're actually in the process. We've done some
10 outreach to our City Council, to our City
11 Government. Many of the council members have also
12 been looking in this direction; they've all been
13 thinking this way. No one wants to put these
14 foul, carcinogenics in our air. No one wants to
15 put these particulate matters in our air.

16 But it just, the bureaucracy is rolling
17 ahead. There are other matters to attend to.
18 It's understandable. There's been no great public
19 supports. Well, that's happening now. It's
20 happening here in Hayward. I've talked to
21 hundreds of people in depth about this subject.
22 I've been gathering people to come to work
23 together, and it's happening.

24 One of the main selling points when I'm
25 talking to people on the street, most people don't

1 even know about this, they don't know about either
2 plant. They don't. Whether or not the City or
3 the CEC or the PUC or Calpine, officially have
4 followed the bureaucratic point by point, oh,
5 within this area you have to do a leaflet. Within
6 this area you have to do an email. I'm telling
7 you, no one knows. Ninety percent of the people
8 in Hayward know because of activists like Kim Finn
9 (phonetic) who has mobilized their community. And
10 that's just in that community. She's sent out --
11 she's done lots of work.

12 Most of Hayward doesn't know. I didn't
13 know. That's on the street. Most people don't
14 know. And everyone you talk to is opposed to
15 this. And everyone I've talked to when we
16 present, we want to move forward.

17 Like Santa Monica, which is talking
18 about -- they were looking at lowering the
19 global -- their carbon footprint and their global
20 warming gas production. Three people, three
21 people in their City Office, after the city
22 manager, just like our city manager retired,
23 thankfully, went ahead.

24 They did the study; they got some grant
25 money through the million roofs initiative, which

1 I think maybe had some part of, or maybe it was
2 the CPUC.

3 Anyway, after doing the study what they
4 found, and this is all in the documentation, I
5 have their city plan and you guys should be
6 familiar with this, I would hope, or -- I'm sure
7 you are familiar with this.

8 Not only are they capable, through
9 energy efficiency and clean production, to lower
10 their footprint. As a responsible member of
11 California, the United States and the planet,
12 they're talking about -- and this is in black and
13 white -- this is the city plan of becoming a clean
14 energy producer by 2020. Zero import of dirty
15 energy. They will be bringing some liquid -- I
16 don't want to get into the details. Okay.

17 PRESIDING MEMBER GEESMAN: You're
18 talking the City of Santa Monica now?

19 MR. PACHECO: The City of Santa Monica,
20 yes.

21 PRESIDING MEMBER GEESMAN: What are the
22 prospects for the City of Hayward emulating that?

23 MR. PACHECO: Well, that is exactly what
24 we've been looking into. And I have to tell you
25 that, again, and responsibility falls on me, and

1 losing my community, I had thought that this
2 project we're here talking about tonight was dead.

3 And so I was focusing on getting a
4 presentation and getting some hard facts, a
5 whitepaper together for you guys by the time of
6 the final decision for the peaker plant was
7 coming.

8 It was a punch to my solar plexus when I
9 found out that three days before a three-day
10 holiday, one of the two biggest holidays in
11 America where everyone takes off, that you guys
12 had -- sorry, that you guys had disagreed with
13 your staff's assessment, and that today would be
14 the last day for local input.

15 I know it wasn't any part of any kind of
16 conspiracy and this and that. But, I tell you
17 what, the timing couldn't have been worse.

18 And so I have done some very generic
19 numbers, working with the County of Marin, the
20 City of Santa Monica, looking at like even with
21 tiny communities like what Sebastopol has done,
22 which was the per capita largest clean energy
23 producer in America.

24 We, ourselves, had CalState Hayward,
25 which was the largest PV producer of any

1 university in America, et cetera, et cetera. A
2 ballpark figure on the numbers. Just in our
3 industrial footprint alone, I've been working on
4 the GIS system. And I've been working in -- I've
5 had some consultation with the Hayward's GIS
6 coordinator.

7 Just in our industrially own footprint
8 we have 36,879,000 square feet. Now, I'm a
9 construction worker. I've worked for the past
10 nine years for the phone company, and I've done
11 construction all my life. The past 14 years of it
12 in Hayward. I know the industrial zone.

13 It's about 93 percent flat roofs, the
14 kind perfect, absolutely perfect for cheap, easy
15 installation of solar. We're moving forward on
16 this. And a huge selling point, as I talk to
17 people who, you know, hey, they're good people but
18 they're interested in the ballgame, and you know,
19 they got to pick up their kids.

20 A huge selling point in actually making
21 a paradigm shift here in Hayward, is when I
22 present to them the fact sheet. You know what,
23 this is the options. We're either going to get
24 ourselves a peaker plant or Russell City where
25 we're putting in hundreds of tons of nitrogen

1 oxides, sulfates, particulate matters, carbon
2 monoxide, and as was being read earlier, ammonia,
3 benzene, ethyl benzene, formaldehyde, hexane, et
4 cetera, et cetera.

5 When you present them with the stark
6 choice, hey, are you interested. And I actually
7 am already organizing people to do some private
8 industry stuff, just to try to get the ball
9 rolling. To show our City that we're serious,
10 this can happen.

11 We have the capacity of perhaps being
12 one of the greatest per-capita producers of clean
13 energy in America. We have that capacity. There
14 is outreach in the community that knows about
15 these proposed plants. And one of the biggest
16 selling points to the guy on the street, of which
17 I'm one, is you have same-old, same-old, which is
18 leading literally to the environmental degradation
19 of such a large measure, which whether it sounds
20 crazy or not, is going to lead to some serious
21 societal problems. And is leading to mass
22 extinctions even as we speak. That's already
23 happening, you know. It's just everyday reality.

24 We can make a paradigm shift in Hayward.
25 You are going to take the wind out of -- you are

1 going to take a big part of the wind out of the
2 sails as we do outreach to the community if you
3 put either one of these plants here. Especially
4 this monster plant of Russell City.

5 Now, I know that the Board Members, I
6 know the people that are involved in this, you've
7 made this your life work. You know far well
8 better than I do all of the studies and
9 projections of the pollutants and the global
10 warming gases that California puts out, and what
11 we're trying to achieve.

12 Hayward has a possibility, has a real
13 chance, and I'm committed to it and so are a lot
14 of people, but we're just in the ground stages of
15 being one of the country's leaders in changing the
16 current paradigm.

17 Now this is just more of the same.
18 Sure, it's cleaner than a coal plant in China.
19 What isn't? You know what, Calpine wants to make
20 the money off of this. Have they come to Hayward
21 or to any community and said, hey, how about if we
22 pay for some -- let us rent some space on your
23 tilt-up, on your 3000 square foot tilt-up. Let us
24 put up 3 kilowatts on your house. We'll place it,
25 we'll make the money from it. The same old

1 business as usual. And you know what all the
2 projections show.

3 Anyway, I'm sorry, just to reiterate, I
4 would like you to understand this. This is real.
5 When it comes to the man on the street who has to
6 buy into such a project, especially in a community
7 that isn't already as progressive, say, as Santa
8 Monica or Marin County, where the individual
9 cities are now mandating such things after
10 programs rolled out by the county, is the stark
11 choice.

12 If we're allowed to pursue our clean
13 energy development and energy efficiencies, it's
14 going to work. You throw in this power plant
15 people are going to go, what the hell, we already
16 got this monster here, what does it matter.
17 That's the attitude, whether you believe it's
18 intelligent or not; whether you believe it makes
19 sense or not, that's what's happening here.

20 Anyway, that's my comments. Thank you.
21 Please do not allow this. Listen to your staff's
22 assessment and give us some breathing room to move
23 forward on what truly needs to be done.

24 HEARING OFFICER KRAMER: I want to be
25 real clear that the area in which Commissioner

1 Byron and I disagreed with the staff assessment
2 related to impacts on the airport. We didn't
3 disagree with respect to public health impacts or
4 air quality impacts or any of the other
5 environmental or public health and safety
6 considerations.

7 The record is very clear and summarized
8 extensively in our decision that there are no
9 identified adverse impacts associated with the
10 plant.

11 I know that there are a number of
12 members of the public that don't agree with that,
13 but we happen to agree with our staff's
14 assessment.

15 So the area of conflict related to
16 impacts on the airport. I just want to make
17 certain that you clearly --

18 MR. PACHECO: I was --

19 PRESIDING MEMBER GEESMAN: -- understand
20 that.

21 MR. PACHECO: I was aware of that. And
22 thank you for clarifying. I was aware of that.
23 But I have to tell you again, as someone who has
24 another job and is new to this process, even
25 though it was mostly aviation hazard, or it was

1 aviation hazard, which was your staff's assessment
2 for a no, everyone who knows about it, and it's
3 only a small minority of this community that does,
4 thought it was a dead deal. And that we could
5 concentrate on the peaker plants. Okay.

6 So, I --

7 PRESIDING MEMBER GEESMAN: Okay, I also
8 want to be real clear that I have a clear,
9 unmistakable impression that the City of Hayward
10 is in support of this project. And our record is
11 replete with indications of that support.

12 MR. PACHECO: Yes. I do not disagree
13 with that, nor did I state otherwise.

14 I would, and I won't even get into
15 details, but I don't think it would be helpful or
16 appropriate, as I said, the original decision was
17 made at the tail end of a manufactured,
18 manipulated crisis.

19 Now, grant you, we do need --

20 PRESIDING MEMBER GEESMAN: Yeah, but we
21 have letters --

22 MR. PACHECO: I understand that.

23 PRESIDING MEMBER GEESMAN: -- and
24 indications of support --

25 MR. PACHECO: I understand that.

1 PRESIDING MEMBER GEESMAN: -- long since
2 then.

3 MR. PACHECO: Yes, I understand that.

4 PRESIDING MEMBER GEESMAN: Current
5 indications of support.

6 MR. PACHECO: I understand that. And
7 what I'm speaking -- I understand that.

8 PRESIDING MEMBER GEESMAN: Plus a real
9 estate transaction that the City is involved in,
10 in terms of swapping parcels with Calpine.

11 MR. PACHECO: I understand that the City
12 supports this. The community does not. And the
13 community wants to move forward, and the City does
14 want to move forward with clean energy. Even
15 though the City does support this monster plants,
16 it's my understanding of talking to people,
17 they've already been looking into this. They're
18 all for the idea. They would like to work in
19 concert moving forward on that.

20 They want the monster plant and clean
21 energy. The community wants no monster plant and
22 clean energy.

23 PRESIDING MEMBER GEESMAN: Now, I also
24 have to observe to you that in our system of
25 government appointed officials like Commissioner

1 Byron and myself, are supposed to listen to
2 elected officials as to what the community wants.

3 So in a situation where the elected
4 representatives of the community say that they're
5 in support of the project, it's not really
6 Commissioner Byron's and my place to second-guess
7 them.

8 MR. PACHECO: I understand, I thank you
9 for clarifying that. I understand that. Nor
10 would I expect you to actually go on the street in
11 the community and start polling people. Might be
12 a good idea, but I don't expect that to happen. I
13 understand that you're not required to do that.

14 PRESIDING MEMBER GEESMAN: The local
15 elected people would not be very happy if --

16 MR. PACHECO: No, they wouldn't.

17 PRESIDING MEMBER GEESMAN: -- we, in
18 fact, did that.

19 MR. PACHECO: No, they wouldn't. If a
20 state board started messing around in their
21 district. But what I'm telling you is that -- or,
22 I'm sorry, what I'm sharing with you here is that
23 the City's current position on this is not
24 supported by the community. Most of it doesn't
25 know about it, and everyone who does, except for,

1 I believe, one Chamber of Commerce Member, is
2 against it. No one knows about it.

3 Now, I guess we could try to organize a
4 recall. I'm joking. It's not going to happen.
5 And I understand that you do have to take --

6 PRESIDING MEMBER GEESMAN: Well, let me
7 jump in again.

8 MR. PACHECO: Yes, sir.

9 PRESIDING MEMBER GEESMAN: I sit on a
10 lot of power plant siting cases. There are some
11 communities, not very many, but there are some
12 communities where we do have people come and say,
13 you know, we really want this power plant here.

14 The overwhelming majority never have any
15 local support. Never. So that's not a compelling
16 factor in terms of us trying to determine what the
17 right decision to make is.

18 So, it's a function really of what does
19 the evidence in our record show; what are the
20 state's overall needs in terms of electricity; and
21 whether the law has been satisfied.

22 MR. PACHECO: Yes. I believe probably
23 most people in this room do understand that you
24 want to know whether the law was satisfied,
25 period. And that you do take the position of the

1 local elected officials as an indicator of the
2 community. But that's not a true indicator.

3 And I understand that's not something
4 that you -- that you just said, you're not going
5 to take into a large percentage of your opinion.
6 It probably should be, but it's not. You're not
7 required to, doesn't look like you're maybe want
8 to right now. But the community is against this.

9 And when you speak about the needs of
10 California, the needs of California, in my
11 opinion, is that we need to move to clean energy.
12 We need to be more --

13 PRESIDING MEMBER GEESMAN: I agree with
14 that.

15 MR. PACHECO: -- efficient. And I'm
16 telling you there's a local movement right now.
17 And putting this old technology, yes, it's
18 relatively new, it's not as bad as coal plants,
19 it's going to seriously hinder --

20 PRESIDING MEMBER GEESMAN: It's not as
21 bad as a 20-year-old gas plant --

22 MR. PACHECO: This is true.

23 PRESIDING MEMBER GEESMAN: -- that might
24 not be economic to operate anymore if it's
25 replaced with a newer gas plant.

1 MR. PACHECO: That's fine, but we --
2 here in the community, as we organize and move
3 forward towards a different system, Solar Santa
4 Monica-style system, or even a CCA --

5 PRESIDING MEMBER GEESMAN: I'm all in
6 favor of that.

7 MR. PACHECO: -- you will be doing harm.
8 And whether or not, in your own opinion, and
9 whether or not, how much it's going to weigh in to
10 you, whether you would like to see 300 communities
11 with CCAs across California, and bundling
12 agreements like Solar Santa Monica, --

13 PRESIDING MEMBER GEESMAN: Three
14 hundred. We've got more than 900 cities. Why
15 shoot so low?

16 MR. PACHECO: That's my opinion. And I
17 believe that Hayward, you know, --

18 PRESIDING MEMBER GEESMAN: Start here
19 first.

20 MR. PACHECO: Absolutely. Absolutely.
21 And you know what --

22 PRESIDING MEMBER GEESMAN: Persuade your
23 city council.

24 MR. PACHECO: I've -- we've been doing
25 that. We have been doing that. This deadline,

1 like I said, we thought we had six -- this
2 deadline just came out of the blue and you can
3 only do so much stuff in three working days.

4 And, you know, shame on me and everyone
5 else for not being aware, paying attention
6 earlier.

7 PRESIDING MEMBER GEESMAN: No, you're
8 here tonight; don't do that. I mean --

9 MR. PACHECO: But, like you said, why
10 not shoot higher. I would also like to put out
11 there, and again I don't know if this is anywhere
12 on the sheet or where you do the percentages that
13 make the decision.

14 San Francisco is an amazing city; I was
15 born there; I grew up in Daly City, which is right
16 next door to it. I love San Francisco. Some
17 people don't. They're doing a community choice
18 aggregate, like, you know, it's amazing what
19 they're shooting for. And it looks like they can
20 do it. They've done all the groundwork.

21 Now, they're a world class metropolis,
22 okay. Santa Monica is also another amazing
23 community. Geographically they're kind of like
24 us. Maybe not in economics because we have a much
25 larger industrial base, more blue collar. Again,

1 they can be written off; oh, they're small,
2 they're progressive, they're tree-huggers. I,
3 myself, am a tree-hugger, whatever.

4 Hayward has a community of 150,000
5 people approximately, and that's a blue collar,
6 workhorse town. If a community like we, our size
7 and of our reputation, can do this, it will be
8 impetus to so many other city governments and so
9 many other citizen groups across the state.

10 And I am telling you that you will hurt
11 us as we try to move forward on this. And we're
12 trying to do it quickly. We're trying to do it,
13 we're trying to produce 10 megawatts maybe within
14 the next three years; and maybe get like 100 of
15 reduction, or maybe 80. I'm highballing there.

16 But on the way to doing even larger
17 numbers. And we can be a great example. We can
18 be an amazing blue collar example to the State of
19 California. And I'm asking you not to hurt that
20 effort. And I'm also asking not to further poison
21 our air, which that's what I'm calling it, with
22 these huge amounts of toxins, particulates,
23 dioxides, sulfates, et cetera.

24 And that's my statement, thank you.

25 PRESIDING MEMBER GEESMAN: Thank you.

1 And thank you for coming to two of these now. I
2 think that --

3 MR. PACHECO: Well, (inaudible) --

4 PRESIDING MEMBER GEESMAN: I know it's
5 hard to get to these things and it takes a lot to
6 participate. But believe me, over time you do
7 have an impact. And your contribution's
8 appreciated.

9 MR. PACHECO: (inaudible).

10 HEARING OFFICER KRAMER: I just have
11 two, or one and a half speaker cards. Is there
12 anyone else in the audience who is planning on
13 speaking that didn't give us a card? I have two
14 and a half now. Anyone else who is planning on
15 speaking? Evidently not.

16 PRESIDING MEMBER GEESMAN: Yeah, why
17 don't we take a five-minute break.

18 HEARING OFFICER KRAMER: Let's take a
19 five-minute break.

20 (Brief recess.)

21 HEARING OFFICER KRAMER: Okay, we'll go
22 back on the record now. Our next speaker is
23 Juanita Gutierrez.

24 MS. GUTIERREZ: I am Juanita Gutierrez,
25 J-u-a-n-i-t-a Gutierrez, G-u-t-i-e-r-r-e-z. I

1 live at 2236 Occidental Road. I'm a real estate
2 broker, and because of my profession I am involved
3 with lots of people.

4 And on the 26th I guess, I receive a
5 request on my email from the Energy Commission
6 saying, we want to hear your comments. So I wrote
7 back and I gave my comments to you, or to your
8 staff, I don't know, to somebody from the Energy
9 Commission.

10 But then I said, I should say my
11 comments to somebody else, to people that can do
12 something. So then I went -- first, of course, I
13 wrote it. I send it to the Energy Commission
14 saying what are my comments, probably you don't
15 want to hear them.

16 My comments are a disappointment. I am
17 very disappointed. Because I am a positive
18 person, and I believe in California. California
19 is number one within the United States. And it is
20 respected throughout the world because California
21 cares. California protects its people. That's
22 what this letter says.

23 So, please, do something. So I started,
24 I said, what to do? Where do I get the names of
25 my officials. I know who they are, but how do I

1 contact them.

2 I went and looked at all the newspapers.
3 I look on Monday, Tuesday, because before you used
4 to get, you know, the name of all our officials.
5 Couldn't find it.

6 So then I called Kim Finn, which is one
7 of our organizers, and I said I need to get the
8 contact for all our officials. So she gave me the
9 contacts. I went into the web, found everybody.
10 Then it says, oh, you cannot contact (inaudible)
11 because of security.

12 Okay, what do I do. I have a fax
13 machine. So, I got the fax number; I made a copy
14 of this letter; I used my cover sheet that says
15 Juanita's Realty, telephone, fax, email, da-ta-da,
16 and I wrote -- I handwrote my comments saying,
17 urgent.

18 I send it to all the officials that I
19 can think of, to our Governor, to our (inaudible)
20 because I respect him a lot, to (inaudible), name
21 it, to all of them. Saying urgent, please help
22 us. I live in the flatlands of Hayward. That is
23 my neighborhood.

24 And among all the cities in the area we
25 have been chosen to be the one where the two power

1 plants are going to be located, despite opposition
2 from the residents. Despite the fabulous report
3 that your staff has prepared on the hazard for the
4 airport. It looks like it's going to be a go.
5 Please help us.

6 Out of all those faxes that I sent, out
7 of all those emails that I sent, because I email
8 it to Mayor Sweeney, to our Supervisor Steele,
9 only one person answer. Mayor Sweeney. He says,
10 I read your comments; they are good comments.
11 Nobody else answered.

12 The reason why I didn't come to speak at
13 the beginning is because I was hoping that
14 somebody would be here. But nobody was here. No
15 official was here.

16 But still I believe it is worth it that
17 I waste my saliva, even though, as you say, you
18 know, we are here, our job is not to listen to
19 you, you don't mean it that way. But our mission
20 is to listen to you representatives.

21 So, if your representatives are saying
22 is okay --

23 PRESIDING MEMBER GEESMAN: Mayor Sweeney
24 was here.

25 MS. GUTIERREZ: Okay, I don't know, I

1 respect -- I respect them all. I am a believer,
2 like I say, in our state. I do believe.

3 But most of our neighbors, hundreds,
4 thousands of them have sent letters to you, have
5 sent emails. Many of them when I have talked to
6 them have talked to me with disappointment, which
7 is what I also feel. They said, forget it,
8 Juanita, nothing can be done. It's a lost case.
9 It is an approved deal.

10 And I said to them, no, have faith. So
11 this is why I'm here speaking to you, urging you,
12 begging you, please restore the faith in our
13 people. Try. Try. Try to listen to your Energy
14 Commission Staff; try to listen to those letters
15 that were sent to you.

16 I don't want to repeat the whole thing
17 again, we are surrounded by schools, old people.
18 And one of them -- and it's just not a good thing.
19 It's not a good place. It's the wrong place; too
20 close to people. It shouldn't be here. We should
21 not be victimized by that.

22 And that is what I'm here to say. I beg
23 you. One more thing that I wanted to touch is
24 this deal about mitigation exchange. They are
25 saying if you are approved we will do retrofitting

1 of the fireplaces. You know, who's going to pay.
2 That doesn't matter.

3 My point is, since I am a real estate
4 person, I do go to lots of houses. And when I
5 take, you know, notes from the sellers I ask, have
6 you used your fireplace. Ninety-nine percent of
7 the answer is no. I used it many years ago.

8 So we are assuming, or somebody is
9 assuming that San Leandro, San Lorenzo, everybody
10 uses the fireplaces. No, gentlemen, that's not
11 the truth. Just like to point that out.

12 So that idea of retrofitting the
13 fireplaces is not a good one. It's not a valid
14 one in my book. Thank you.

15 HEARING OFFICER KRAMER: Thank you.
16 Next is Joanne Gross.

17 MS. GROSS: My name's Joanne Gross,
18 G-r-o-s-s. And I'm tired; it's late and I have to
19 get up at 5:30 tomorrow morning to go to work.
20 And I'm tired of coming to all of these meetings
21 and writing emails and letters and handing out
22 flyers to people in the neighborhood.

23 I don't know if you realize how much
24 work people in the community have gone to to try
25 to let you know how we feel against the power

1 plants. A power plant should not be built so
2 close to where people live and work.

3 And I'd just like to remind the
4 Commissioners that the City Council that approved
5 the plants originally had a different mayor and
6 some different members. The head of the Hayward
7 Chamber of Commerce does not live in Hayward; he
8 lives in Pleasanton. That's something curious I
9 found out. That many of the Chamber of Commerce
10 businesspeople who support the building of the
11 plant don't live here.

12 I have spent a lot of time going through
13 your staff assessment, and I have to say I'm
14 really impressed with the expertise of your staff.
15 There's some very, you know, highly qualified
16 people writing these reports.

17 However, I can't understand why you
18 would disregard the recommendations of the land
19 use planners who are former air traffic
20 controllers. And yet go along with the writers of
21 the other sections who say that there's no
22 significant impact on air quality and all of the
23 other things.

24 One gross omission I think in this
25 report is the socioeconomic resources report.

1 Also the staff member who wrote that, she did not
2 include a r, sum, in here; either that, or I'm
3 missing that page.

4 But I think it's a gross omission that
5 the issue of social justice is not addressed in
6 this report. It's a huge issue. And I think
7 you're remiss in your duties to not address it. I
8 hope you will be discussing it in your discussions
9 next week.

10 PRESIDING MEMBER GEESMAN: Can I jump in
11 on that?

12 MS. GROSS: Sure.

13 PRESIDING MEMBER GEESMAN: Because I've
14 seen this in a number of our other staff reports.
15 And the logic that the staff uses in that, there's
16 a fairly specific environmental justice criteria
17 that EPA has developed, and the California
18 Environmental Protection Agency has, as well.

19 Our staff does the evaluation within a
20 six-mile radius of the facility. But because by
21 the time a project actually gets to the
22 Commissioners for decision, virtually all of them,
23 in our staff's judgment, have had their
24 environmental and public health and safety impacts
25 mitigated to a level of insignificance, the staff

1 then concludes that there cannot be any
2 environmental justice issue here, because there is
3 no environmental issue.

4 All of the issues have been mitigated to
5 a level of insignificance. That's why the
6 socioeconomic conclusion is the way in which it
7 is. And it's that way in virtually all of the
8 staff assessments of projects that come to us.

9 Their overwhelming belief, and you were
10 complimentary of them, critical of us for not
11 following their advice on the airport, but their
12 overwhelming conclusions are that if you mitigate
13 down to a level of insignificance, there is not an
14 environmental justice issue associated with it,
15 because there's not an environmental issue
16 associated with the project.

17 MS. GROSS: When you say mitigate to a
18 point of not significance, you're talking about
19 statistical significance --

20 PRESIDING MEMBER GEESMAN: Yes, and
21 legal significance. And the two are
22 interchangeable, the way in which we use them.

23 MS. GROSS: Okay, well, I just can't
24 understand it just because of the socioeconomic
25 makeup of Hayward. I live outside the city limits

1 of Hayward, and --

2 PRESIDING MEMBER GEESMAN: But see, let
3 me observe -- excuse me for interrupting you. I
4 didn't mean to do that. I did want to say I think
5 you don't really agree with the premise of the
6 staff report that there are no impacts associated
7 with the project. So I just wanted to confirm
8 that that is your viewpoint.

9 I know you're complimentary of the staff
10 work, but I think you, yourself, have come to a
11 different conclusion than they did.

12 MS. GROSS: Yeah, I just don't
13 understand why it wasn't addressed in here, but I
14 understand your response.

15 But let me just say that, you know,
16 Hayward consists of a majority of minority
17 working-class immigrant people. There's often a
18 language barrier. A lot of these people don't
19 vote, and they're the more marginalized part of
20 our society.

21 And it just doesn't seem fair that the
22 population that's most affected by the health
23 issues with asthma and that sort of thing, they're
24 the population that is most at risk of suffering
25 from this plant. And I think you should consider

1 that.

2 So, anyway, thank you. This is my last
3 night to say something to you about this. So,
4 thanks.

5 PRESIDING MEMBER GEESMAN: Thanks for
6 coming.

7 HEARING OFFICER KRAMER: Thank you. Tom
8 Kersten.

9 MR. KERSTEN: Good evening; my name is
10 Tom Kersten, K-e-r-s-t-e-n. I'm a resident of
11 Hayward; I've lived here since 2001. I'm also the
12 President of the Hayward Demos Democratic Club.
13 Although I cannot speak for the entire club,
14 because we haven't really polled the entire club
15 on this issue.

16 But we did meet last night, our
17 executive board did meet last night. And we
18 briefly talked about these issues, the issue of
19 the power -- specifically the Russell Power Plant.
20 And the Board, as a whole, was against the power
21 plant. I just want to let you know that.

22 My concern with this, as they're talking
23 about the specifics of this mitigation, and I'm
24 not a technical person. You gentlemen have much
25 more expertise on these issues than I do, so I'm

1 not going to be talking as any kind of an expert
2 on this thing.

3 But just looking at it from an overall
4 standpoint, it just seems to me this mitigation of
5 this particular matter, I guess is my biggest
6 concern. And we're going to say that we're going
7 to mitigate this through this retrofitting of
8 fireplaces.

9 I think you really need to take a hard
10 look at that, because just, in my mind, my
11 nontechnical mind, I just cannot understand that.
12 I don't understand how you can possibly
13 rationalize that as being some kind of a way to
14 mitigate. Because like a previous speaker said, a
15 lot of people don't use their fireplaces. In
16 Hayward there's maybe three or four months out of
17 the year you're really going to need the heat from
18 a fireplace to really use it.

19 When you are going to use a fireplace
20 it's going to be in the wintertime; and I think a
21 power plant of this, a peaker -- a power plant of
22 this nature is going to be mostly running in the
23 summertime I would imagine. Again, I'm not an
24 expert on this, but I would --

25 HEARING OFFICER KRAMER: Actually this

1 one is a baseload --

2 MR. KERSTEN: Okay, go ahead.

3 HEARING OFFICER KRAMER: -- plant. This
4 isn't --

5 PRESIDING MEMBER GEESMAN: This isn't
6 the peaker project. That's the Eastshore.

7 MR. KERSTEN: Well, isn't this a
8 dispatch project or something like that?

9 HEARING OFFICER KRAMER: Right, but as
10 baseload plant tends to run nearly continuously.
11 It provides, you know, kind of the lowest level of
12 power; and other plants that are less efficient
13 come on as is necessary to add to that. So, --

14 MR. KERSTEN: Okay, so this one will be
15 running pretty much all the -- full time?

16 HEARING OFFICER KRAMER: It could be,
17 yes.

18 PRESIDING MEMBER GEESMAN: And I believe
19 the --

20 MR. KERSTEN: Could be. Okay.

21 PRESIDING MEMBER GEESMAN: -- Bay Area
22 Air Quality Management District is most concerned
23 with particulate emissions in the wintertime and
24 at night in this area because of the inversion
25 layer that's created by the marine element.

1 MR. KERSTEN: Okay. Again, I'm just
2 saying from my, from a layman's viewpoint it's
3 just hard to make all that make sense. That's all
4 I'm trying to say. That when you present this to
5 the average layman he's like, --

6 PRESIDING MEMBER GEESMAN: Well, and --

7 MR. KERSTEN: And we brought the same
8 thing up at the Board last night; we talked about
9 this and it didn't make sense to them.

10 So I guess what I'm trying to say is
11 that maybe you need to clarify that in people's
12 minds, because, you know, to the average person it
13 doesn't make sense that fireplaces are going to
14 mitigate all this additional particulate matter.
15 That's all I'm going to make a comment on, that
16 seems --

17 PRESIDING MEMBER GEESMAN: Also, to be
18 clear, from the Bay Area Air Quality Management
19 District's standpoint, if Calpine is unsuccessful
20 enlisting enough volunteers for this fireplace
21 retrofit program, they're going to have to do --
22 Calpine is going to have to go and purchase
23 offsets elsewhere.

24 MR. KERSTEN: I understand that.

25 PRESIDING MEMBER GEESMAN: Now,

1 understand that there's concern that those may not
2 be as localized a set of offsets as --

3 MR. KERSTEN: Exactly.

4 PRESIDING MEMBER GEESMAN: -- the
5 fireplace retrofit program is designed to create.

6 MR. KERSTEN: All right. So that -- I
7 mean you just articulated another of our concerns
8 that if we can't get enough people in Hayward to
9 do this retrofitting, then, yeah, as Mayor
10 Sweeney, I think, made the point very well, that
11 we could be trading our air quality for somebody
12 else's. You know, we're going to be taking the
13 hit on it.

14 So that is my concern.

15 PRESIDING MEMBER GEESMAN: And that's an
16 important point, but it varies from pollutant to
17 pollutant. Because certain pollutants,
18 particularly NOx, are regional in nature. And the
19 logic of the Air Quality Management District's
20 regional offset is that a regional pollutant can,
21 in fact, be effectively offset by regional
22 offsets.

23 They change the ratios based on --

24 MR. KERSTEN: Right.

25 PRESIDING MEMBER GEESMAN: -- distance.

1 But the underlying logic of the Bay Area Air
2 Quality Management District's NOx offset program
3 is that that's a regional pollutant. And that an
4 offset in San Francisco does, in fact, create net
5 value in Hayward.

6 MR. KERSTEN: But doesn't the
7 particulate matter mainly stay in Hayward?

8 PRESIDING MEMBER GEESMAN: The
9 particulate pollution is more localized.

10 MR. KERSTEN: That's not -- I'm
11 referring mostly to the -- my understanding is
12 based, and again I'm coming in this kind of late,
13 and I'm not a technical person, but my
14 understanding is that the particulate matter
15 mainly staying in Hayward. So that is my concern.

16 But if we can't mitigate this within
17 Hayward, then we are sacrificing Hayward's air,
18 okay, which I don't think is right.

19 And the other part of it, I think
20 another person made a very good point, is that,
21 you know, if we're asking people with fireplaces
22 to do these retrofits, I think we should be --
23 somebody other than those residents should be
24 responsible for that because some -- Calpine,
25 whoever the corporations that are going to be

1 making a profit on this should be responsible for
2 that.

3 Because these are going to mostly be
4 poor working people, you know. Or newer people
5 that don't have a lot of resources to make this
6 kind of investment. That's another concern.

7 So, that's what I've got. Appreciate
8 the time. Thank you very much.

9 PRESIDING MEMBER GEESMAN: Thanks for
10 coming.

11 HEARING OFFICER KRAMER: Last speaker I
12 have a slip for is Audrey LePell. Before she
13 comes up, did anyone else want to make a comment
14 that didn't give us a card?

15 Okay, Ms. LePell, you're last.

16 MS. LePELL: Thank you, gentlemen; and
17 thank you, staff, and thanks to the audience, I
18 can say that.

19 So I wanted to educate you in a very
20 minute way. Particularly with what is happening
21 in Hayward, I think. Hayward is a very political
22 community. Hayward is a wealthy community. It is
23 also an artistic community. It is an educated
24 community. And it's a good place to live. And
25 I've been here 44 years.

1 So, I wanted to say I think you'll see
2 and hear from a lot of us in the future.

3 Tonight is a school night; tonight is an
4 everyday work night for most people. So perhaps
5 that's one of the reasons these chambers aren't
6 filled.

7 As an alternative I propose you think
8 about, and I suspect you have, solar energy, wind
9 power energy, conservation as a way of energy, and
10 geothermal as an alternative. Chilled -- very
11 interesting because in Union City at one time in
12 its history, the city just immediately south of
13 Hayward, they had artesian wells. They've been
14 capped. Hayward has artesian wells. They have
15 been capped. There is a source of energy in a way
16 that perhaps has not been tapped.

17 There is a statement on page 3 of this
18 book, and I thank Mr. Kramer for letting me look
19 at it -- and I hope you say I can keep it -- that
20 says, and I will quote: As is discussed at the
21 air quality and public health sections below, the
22 evidence shows there will be not significant
23 health impacts. And that the project will comply
24 with all health-related requirements."

25 I, too, have asthma and I live

1 immediately east of this project. That's for the
2 record. So there are other people like me who
3 have problems breathing at certain times.

4 Environmental justice. Environmental
5 justice is a relatively new concept, I believe.
6 But it's always been there. And although as you
7 stated very eloquently, Mr. Geesman, what its
8 ideal is, environmental justice to a layperson or
9 a political person, such as I am, means something
10 different.

11 It means can you justify what you're
12 doing to the environment. And what are you doing
13 to the environment. And that's a very serious
14 question because Hayward is our environment. And
15 the winds blow from west to east every day when
16 the wind is blowing, except when we have the so-
17 called Santa Anas moving in another direction.

18 The aesthetic of the building of a power
19 plant, where does Audrey LePell come in on that.
20 Well, it happens that I was married to an artist
21 for 38 years, and architecture is an area that I'm
22 very interested in.

23 I was the assistant art director at the
24 Sun Gallery, our community art gallery, for three
25 years. I try to pay attention to things artistic.

1 Art is an important element in our life and I
2 think you would admit that, or I hope you would
3 admit that, I should say. Architecture is
4 incredibly important.

5 When this proposal first came to the
6 Hayward Area Shoreline Planning Agency Citizen
7 Advisory Committee, I jumped right up and said,
8 that's about the ugliest building I've ever seen.
9 And I've seen many a power plant.

10 But in Seattle, Washington, they have a
11 power plant that is of historical benefit because
12 it is so old people didn't remember what power
13 plants used to look like. And it's in a public
14 park, and it's been restored. And it's considered
15 sculpture, not art, but a kind of art that is
16 sculpture. Could you consider Calpine's design
17 artistic, beautiful, handsome, something to
18 complement our shoreline? I would argue it is
19 not. And I won't argue that tonight.

20 I'm going to end my short presentation
21 with a newspaper quote from the Daily Review, June
22 8, 2007: The power companies are always quick to
23 point out that they'll buy credits to offset the
24 pollution, but what does that do to make
25 conditions acceptable for residents in that area

1 of the plants? Nothing.

2 "This isn't a process that would, could
3 or should be rushed. The Bay Area may need power,
4 but that doesn't trump basic quality of life and
5 health issues. We urge that the CEC, Calpine,
6 Tierra and Pacific Gas and Electric Company to
7 take their time in these planning stages. Listen
8 to the residents and city leaders and genuinely
9 take their concerns to heart. Do we really need
10 two power plants in the same area? Do we really
11 need two in Hayward in general? Consider the
12 impacts, weigh the information and decide. Isn't
13 there somewhere else more conducive to this plan?

14 Thank you.

15 PRESIDING MEMBER GEESMAN: I want to
16 compliment you for your summary there. And also
17 say I think that's what we've done with respect to
18 this particular application.

19 We don't have the Eastshore project in
20 front of us tonight, but with respect to the
21 Russell City project I think we've done precisely
22 that.

23 And I want to repeat the quote that you
24 read from page 3 of the report: The evidence
25 shows that there will not be significant health

1 impacts, and that the project will comply with all
2 health-related requirements."

3 Commissioner Byron and I agreed with
4 that conclusion from the staff. And that forms
5 the basis of the recommendation that we're making
6 to the full Commission next week.

7 MS. LePELL: Thank you. But I think
8 the, should I say operative word is all health.
9 Thank you.

10 AUDIENCE SPEAKER: Is there a reason why
11 you don't put this plant in San Ramon?

12 PRESIDING MEMBER GEESMAN: I'm not
13 certain the transcript picked that up. The
14 question was is there a reason why we don't put
15 this plant in San Ramon.

16 AUDIENCE SPEAKER: Right, -- the area,
17 not just Hayward.

18 PRESIDING MEMBER GEESMAN: Someone has
19 not applied for a project in San Ramon. We --

20 AUDIENCE SPEAKER: Calpine?

21 PRESIDING MEMBER GEESMAN: We deal with
22 applications that are filed in front of us.

23 AUDIENCE SPEAKER: (inaudible).

24 PRESIDING MEMBER GEESMAN: Perhaps
25 someone will apply for a plant in San Ramon.

1 HEARING OFFICER KRAMER: Okay, I believe
2 that was all the people who wanted to speak.

3 I realize that there are two minor
4 housekeeping details, and then I think we can
5 conclude for the evening.

6 One was earlier Mr. Haavik and Mr.
7 Wheatland had a dialogue and they were discussing
8 the different parcels that would make up the
9 project. Lots number 1, 2, 3 and 4. And I don't
10 think we said for the record, we didn't identify
11 the document they were looking at.

12 So I just, for the record, wanted to
13 identify that document as figure DR-29-1. And it
14 comes from the applicant's data responses that
15 were already admitted into evidence as exhibit 17.

16 And then Commissioner Geesman's comment
17 about communications from the City reminded me
18 that in the decision we noted that there was a
19 letter from the City that came in regarding the
20 City's position that the wave, the architectural
21 treatment for the power plant, was no longer
22 necessary.

23 And that had not been introduced as an
24 exhibit. So I just wanted to clarify with the
25 parties whether any of them wish to introduce that

1 document.

2 MR. WHEATLAND: We would like to
3 introduce that document.

4 HEARING OFFICER KRAMER: Okay, the
5 applicant has moved to introduce it. That would
6 be exhibit number 35. Are there any objections
7 from the other parties?

8 MR. HAAVIK: No objection.

9 MR. RATLIFF: No.

10 HEARING OFFICER KRAMER: Okay, that'll
11 be received into evidence today. And that is a
12 July 18, 2007 letter from Acting City Manager Fran
13 David to Eric Knight.

14 That's all the housekeeping items that I
15 have. For the benefit of the public, if you have
16 a copy of the agenda you'll see that to answer the
17 inevitable question about what comes next.

18 It's not on here, but in the notice of
19 this meeting it says that the deadline for
20 providing written comments is this Friday. So my
21 email address is on there.

22 If you're going to send them in at the
23 last minute, please email them. Or you can call
24 and maybe fax them. But we really need to receive
25 them by close of business on Friday so I can work

1 a little over the weekend to digest whatever comes
2 in.

3 AUDIENCE SPEAKER: Could you pass the
4 email address, because we couldn't find an agenda.

5 HEARING OFFICER KRAMER: Well, I have a
6 couple extra notices here, so come on up and I'll
7 circle it for you afterwards.

8 And then early next week the Committee
9 will publish an errata and revisions to the
10 proposed decision. And both of those will go to
11 the full five-Member Energy Commission at its
12 business meeting on Wednesday, the 12th. That's
13 next week. That's at 10:00 a.m.

14 On the agenda I give you the internet
15 address for the Board's agenda, which you could
16 get. If you need help getting that, you could see
17 Mr. Monasmith. But on that agenda there's
18 information about how you can call in if you want
19 on the telephone, rather than coming into
20 Sacramento. Because that meeting will be in
21 Sacramento. So you can call in, if you'd like, to
22 make comments.

23 And also on the agenda is the address
24 for the documents, the master page for this case
25 where you can go and see the errata. It'll be

1 emailed, I believe, to people who are on the proof
2 of service list. And perhaps, I'm not sure, but
3 to just the general interest list for this
4 project. So look for it on the internet if it
5 doesn't come to you automatically.

6 And you're also allowed to provide
7 comments to the full Energy Commission at that
8 meeting on the 12th. We ask that those be
9 received by the end of the day on Monday so that
10 we have a chance to look them over and get them to
11 the Commissioners before that meeting, so they
12 have a chance to read them.

13 But you're also welcome to call in or
14 come to the business meeting and make comments to
15 the full Commission in person or on the telephone.

16 Does any party have any additional
17 comments they want to make?

18 MR. WHEATLAND: None.

19 MR. HAAVIK: None.

20 MR. RATLIFF: No.

21 HEARING OFFICER KRAMER: Mr. Wilson.

22 MR. WILSON: This concerns the dates.

23 And I'll make a request for the record. Calpine
24 started this process in 2002 and we're now at
25 2007. The intervenor, Paul Haavik, and I haven't

1 held up the process. We've tried to work with
2 everyone.

3 There are two outstanding letters from -
4 - the one to be corrected from the FAA, and one
5 possibly from Washington, D.C. When and if
6 they'll respond, who knows.

7 So I hereby request that you extend the
8 decision date by at least one week. To be
9 specific, that would be -- your decision date is
10 on the 12th. So I request that you -- that would
11 be the 19th, that would be the following week.

12 HEARING OFFICER KRAMER: Actually the
13 Commission meets normally every two weeks, so they
14 must have had a special meeting with --

15 (Parties speaking simultaneously.)

16 MR. WILSON: I put the request in.

17 PRESIDING MEMBER GEESMAN: I can deal
18 with that now. No. I don't believe that --

19 MR. WILSON: Okay, --

20 PRESIDING MEMBER GEESMAN: I don't
21 believe we'll be getting any further
22 correspondence from FAA. And if we do, they can
23 get it to us before Wednesday. They've known
24 about this for a long number of months.

25 HEARING OFFICER KRAMER: So if they do

1 come up with it, have them -- get a copy to me via
2 email so I'll have --

3 MR. WILSON: I understand. I asked.

4 HEARING OFFICER KRAMER: Okay. I think
5 we've concluded our business. Thank you all for
6 coming. Thanks to the City for providing the
7 facility. And look for the next iteration of the
8 decision on the internet.

9 (Whereupon, at 9:45 p.m., the
10 Conference/Evidentiary Hearing was
11 adjourned.)

12 --o0o--

CERTIFICATE OF REPORTER

I, RICHARD A. FRIANT, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of September, 2007.

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